145-300

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~1516.~~ 1106 ~~755~~ 338

THE SOUTH SPRING HILL GOLD MINING COMPANY, PLAINTIFF IN ERROR.

vs.

THE AMADOR MEDEAN GOLD MINING COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED MARCH 7, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, MARCH 15, 1889.

1 *Complaint.*

In the Circuit Court of the United States for the Ninth Circuit in and for the Northern District of California.

AMADOR MEDEAN GOLD MINING CO., a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of New York, Plaintiff,

vs.

THE SOUTH SPRING HILL GOLD MINING CO., a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of Maine, Defendant.

Now comes the plaintiff in the above-entitled action, and, complaining of the defendant, alleges—

I.

That it is and for more than five years last past has been a corporation duly organized and existing under and by virtue of the laws of the State of New York and is a citizen of said State of New York.

II.

That, according to the information and belief of the plaintiff, said defendant is and for more than five years last past has been
2 a corporation duly organized and existing under and by virtue of the laws of the State of Maine and is a citizen of said State of Maine.

III.

That heretofore, to wit, on the 22nd day of May, 1884, plaintiff was the owner of, seized in fee, and in the possession of and thence hitherto has been and still is the owner of and entitled to the possession of the following-described lands, lodes, and premises, situate in the county of Amador, State of California, and particularly bounded and described as follows, to wit:

Beginning at the quarter-section corner between sections thirty-one (31) and thirty-six (36), on the township line between township seven north, range ten (10) east and eleven (11) east, Mount Diablo base and meridian, thence south, variation sixteen (16) degrees thirty-five (35) minutes east, along said township line to its intersection with the easterly line of the South Spring Hill quartz mine; thence south forty-one (41) degrees thirty-one (31) minutes east along the easterly line of said South Spring Hill quartz mine to its intersection with the westerly line of the Medean quartz mine; thence north ten (10) degrees fifteen (15) minutes west along the westerly line of said Medean quartz mine fifteen and $\frac{9}{100}$ (15.09) chains to the northwest corner of said Medean quartz mine; thence
3 north seventy-nine (79) degrees forty-eight (48) minutes east four and $\frac{54}{100}$ (4.54) chains along the northerly boundary of

said Medean quartz mine to the northeasterly corner thereof; thence due north two and $\frac{10}{100}$ (2.10) chains to the quarter-section line running east and west through the center of section thirty-one (31), township seven (7) north, range eleven (11) east, Mount Diablo base and meridian; thence west along said quarter-section line six and $\frac{31}{100}$ (6.31) chains to the place of beginning, and also all minerals or lodes therein contained, and all mineral therein contained, and all lodes bearing mineral.

IV.

And plaintiff further alleges, upon its information and belief, that, while the plaintiff was so as aforesaid the owner, seized, possessed, and entitled to the possession of said land, lodes, and premises hereinbefore described, the defendant afterwards, to wit, on or about the 1st day of October, 1886, entered into and upon said premises and ousted and ejected this plaintiff therefrom, and thence hitherto has wrongfully and unlawfully retained and withheld and still does wrongfully and unlawfully retain and withhold the same and the possession thereof from the plaintiff, to the damage of this plaintiff in a large sum of money, to wit, in the sum of three hundred thousand (300,000) dollars.

V.

4 And plaintiff further alleges, upon its information and belief, that said lands, lodes, and premises of plaintiff into and upon which defendant has entered and from which it has ousted and ejected this plaintiff and which it wrongfully and unlawfully retains and withholds from the plaintiff are of the value of one million (1,000,000) dollars and upwards.

B.

And, for a further and separate cause of action against said defendant, this plaintiff alleges—

I.

That it is and for more than five years last past has been a corporation duly organized and existing under and by virtue of the laws of the State of New York and is a citizen of said State of New York.

II.

That, according to the information and belief of the plaintiff, said defendant is and for more than five years last past has been a corporation duly organized and existing under and by virtue of the laws of the State of Maine and is a citizen of said State of Maine.

III.

That heretofore, to wit, on the 22nd day of May, 1884, plaintiff was the owner of, seized in fee, and in the possession of and thence

hitherto has been and still is the owner of and entitled to the possession of the following-described lands, lodes, and premises, situate in the county of Amador, State of California, and particularly bounded and described as follows, to wit:

5 Beginning at the quarter-section corner between sections thirty-one (31) and thirty-six (36), on the township line between township seven north, range ten (10) east and eleven (11) east, Mount Diablo base and meridian, thence south, variations sixteen (16) degrees thirty-five (35) minutes east, along said township line to its intersection with the easterly line of the South Spring Hill quartz mine; thence south forty-one (41) degrees thirty-one (31) minutes east along the easterly line of said South Spring Hill quartz mine to its intersection with the westerly line of the Medean quartz mine; thence north ten (10) degrees fifteen (15) minutes west along the westerly line of said Medean quartz mine fifteen and $\frac{8}{100}$ (15.09) chains to the northwest corner of said Medean quartz mine; thence north seventy-nine (79) degrees forty-eight (48) minutes east four and $\frac{54}{100}$ (4.54) chains along the northerly boundary of said Medean quartz mine to the northeasterly corner thereof; thence due north two and $\frac{10}{100}$ (2.10) chains to the quarter-section line running east and west through the center of section thirty-one (31), township seven (7) north, range eleven (11) east, Mount Diablo base and meridian; thence west along said quarter-section line six and $\frac{31}{100}$ (6.31) chains to the place of beginning, and also all minerals or lodes therein contained, and all mineral therein contained, and all lodes bearing mineral.

6 IV.

And plaintiff further alleges that, while the plaintiff was so as aforesaid the owner, seized, possessed, and entitled to the possession of said land, lodes, and premises hereinbefore described, the defendant afterwards, to wit, on or about the 1st day of October, 1886, entered into and upon the said premises and ousted and ejected this plaintiff therefrom, and thence hitherto has wrongfully and unlawfully retained and withheld and still does wrongfully and unlawfully retain and withhold the same and the possession thereof from the plaintiff, and have committed waste thereon and therein in an amount, according to the information and belief of this plaintiff, of three hundred thousand (300,000) dollars.

Wherefore plaintiff prays judgment against said defendant for the possession, restitution, and recovery of said premises, for the payment of said damages and waste, and for costs of suit.

OLNEY, CHICKERING & THOMAS,
Attorneys for Plaintiff.

7 STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

W. H. Chickering, being duly sworn, deposes and says that he is one of the attorneys for the plaintiff corporation in the above-entitled action; that he has read the above and foregoing complaint

and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

That plaintiff is a resident and citizen of the State of Maine and is absent from the State of California, where affiant resides, nor has it any manager or officer within said State of California; hence affiant makes this affidavit.

W. H. CHICKERING.

Subscribed and sworn to before me this 7 day of September, 1887.

L. S. B. SAWYER,
Com'r U. S. Cir. Court, Nor. Dist. Cal.

Endorsed: Filed Sept. 7, 1887. L. S. B. Sawyer, clerk.

8 *Summons.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Northern District of California.

AMADOR MEDEAN GOLD MINING Co., a Corporation, Plaintiff, *vs.* THE SOUTH SPRING HILL Gold Mining Co., a Corporation, Defendant.	Action Brought in the said Circuit Court, and the Complaint Filed in the Office of the Clerk of said Circuit Court, in the city and County of San Francisco.

The President of the United States of America to The South Spring Hill Gold Mining Co., a corporation duly organized and existing under and by virtue of the laws of the State of Maine, defendant, Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the circuit court of the United States, ninth circuit, in and for the northern district of California, and to file your plea, answer, or demurrer to the complaint filed therein (a certified copy of which accompanies this summons) in the office of the clerk of said court, in the city and county of San Francisco, within ten days after the service on you of this summons, if served in this county, or if served out of this county, then within thirty days, or judgment by default will be taken against you.

9 The said action is brought to recover from you, said defendant, the possession of certain lands, lodes, and premises situate in the county of Amador, State of California, together with the sum of three hundred thousand dollars damages for waste alleged to have been committed thereon and therein, and the costs of this action, all of which is more fully set out in the original

complaint on file herein, to which reference is hereby made, and if you fail to appear and plead, answer, or demur, as herein required, your default will be entered, and the plaintiff will apply to the court for the relief demanded in the complaint herein.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 7th day of September, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the 112th.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By F. D. MONCKTON,
Deputy Clerk.

10 UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 8th day of September, 1887, and personally served the same on the 14th day of September, 1887, — South Spring Hill Gold Mining Company, a corporation, by delivering to & leaving with John R. Tregloan, superintendent & manager of The South Spring Hill Gold Mining Company, a corporation, said defendant named therein, personally, at the county of Amador, in said district, a certified copy thereof, together with a copy of the complaint, certified to by L. S. B. Sawyer, attached thereto.

San Francisco, September 16, 1887.

J. C. FRANKS,
U. S. Marshal,
By L. B. HOPKINS, *Deputy.*

Endorsed: Filed Sept. 19, 1887. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

11 *Answer.*

In the Circuit Court of the United States for the Ninth Circuit in and for the Northern District of California.

AMADOR MEDEAN GOLD MINING CO., a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of New York, Plaintiff,

vs.

THE SOUTH SPRING HILL GOLD MINING CO., a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of Maine, Defendant.

And now comes the defendant in the above-entitled action and defends the wrongs and injuries complained of, and for answer to said action and to plaintiff's complaint therein—

I.

Defendant denies, upon and according to its information and belief, that plaintiff is or was at the date of the commencement of

said action or at any other time the owner of, seized in fee of, or in the possession or entitled to the possession of any lode or lodes or lode bearing mineral contained or situated within the prop-
12 erty or premises described in plaintiff's said complaint.

II.

And defendant, further answering, denies, upon and according to its information and belief, that it, said defendant, either at the time stated in said complaint or at any other time, entered into or upon or ousted or ejected plaintiff from or now retains or withholds or ever retained or withheld from plaintiff any part or portion of the premises or property described in said complaint or the possession thereof, except that portion of a certain mineral vein, lode, or ledge bearing gold which from without and from a westerly direction dips, intersects, and extends into and within the exterior surface lines of the property and premises described in said complaint and at a depth beneath the surface thereof of about eight hundred feet.

III.

And defendant, further answering, alleges, upon and according to its information and belief, that it, said defendant, now is and ever since on or about the 1st day of April, 1881, has been continuously the legal owner and proprietor of, seized in fee, in the lawful possession of, and entitled to the possession of all and every portion of the mineral vein, lode, or ledge last hereinabove mentioned.

IV.

And defendant, further answering, alleges that the only
13 entry it, said defendant, has ever made into or upon the said last-mentioned mineral vein, lode, or ledge, and the only ouster or ejection by defendant of plaintiff therefrom, and the only retention or withholding of the same or the possession thereof from plaintiff by defendant within the exterior boundaries of the property described in said complaint consisted and consists in defendant's lawfully following and working said mineral vein, lode, or ledge last mentioned by the means of a drift or tunnel run by defendant from a certain incline shaft constructed by defendant within certain mining property and premises which continuously ever since the 1st day of April, 1881, have belonged to and been in the exclusive possession of defendant, and which said property and premises, at a point on the easterly line thereof at a distance of about two hundred and forty feet southeasterly from the northeasterly corner thereof, adjoins the property and premises described in said complaint, and which said drift or tunnel is wholly within said vein, lode, or ledge, and, together with said vein, lode, or ledge, extends from within said defendant's said mining property and premises into and which enters and intersects the land and premises described in plaintiff's complaint at a depth of about eight hundred feet beneath the surface thereof, said vein, lode, or ledge having and maintaining an average

angle of about sixty degrees from a perpendicular; that said
14 drift or tunnel enters said property and premises described in plaintiff's complaint at or about at the said point of conjunction of the latter with the mining property and premises of defendant hereinbefore mentioned, and that said vein, lode, or ledge does not at any place approach any nearer to the surface of the land and premises described in said complaint than at a distance of about eight hundred feet under ground.

V.

And defendant, further answering, denies, upon and according to its information and belief, that by reason of defendant's said entry into and upon said last-mentioned mineral vein, lode, or ledge or any part thereof, and the ouster and ejection by defendant of plaintiff therefrom, and defendant's withholding and retaining the same and the possession thereof from plaintiff, or by reason of any entry of defendant into or upon and the ouster and ejection of plaintiff from and defendant's withholding and retaining from plaintiff any portion of the property or premises described in said complaint and the possession thereof, or by reason of any entry of defendant into or upon or any ouster or ejection of plaintiff by said defendant from or any withholding or retaining from plaintiff by defendant any portion of the property or premises described in said complaint or the possession thereof, or by reason of any act or thing complained of in said complaint, or by reason of any act or thing ever done, performed, or committed by said defendant, said plaintiff
15 has been damaged in the sum of $300,000 in money (or in any other thing) or in any other sum whatever or at all; and said defendant denies, upon and according to its information and belief, that it, said defendant, has ever committed any waste upon or within any of the property or premises described in said complaint in the amount of $300,000 or in any other amount or sum whatever or at all.

VI.

And defendant, further answering, for a second, further, and other defence to said complaint and said action, alleges and shows unto the court that on or about the 1st day of April, 1881, and under, by virtue of, subject to, in pursuance of, and in compliance with the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, there was duly granted, conveyed, and patented to this defendant by the United States (by patent in writing bearing date the said 1st day of April, 1881) all that certain mining property and premises commonly known as the "South Spring Hill quartz mine," consisting of a certain gold-bearing mineral vein, lode, or ledge and certain surface land on each side of said vein, lode, or ledge (which did not and does not exceed three hundred feet in width on either side thereof), situated in Amador county and State of California easterly from and adjoining the "Keystone gold quartz mine" and extending from the southerly boundary

16 line of the "Spring Hill and Geneva gold quartz mine" (so called) southeasterly along the general course of said mineral vein, lode, or ledge a distance of fifteen hundred feet.

VII.

And said defendant further alleges that said South Spring Hill quartz mine (including said vein, lode, or ledge) so as aforesaid patented to it, said defendant, on said 1st day of April, 1881, was originally duly located by one W. L. McKim (who then and there was a citizen of the United States over the age of twenty-one years and fully qualified therefor) *on* or about the month of July, 1876, under, by virtue of, in pursuance to, and in compliance with the provisions and requirements of said Revised Statutes, chapter six, title thirty-two, and in compliance with all the requirements of the laws, customs, rules, and regulations of miners in force in the mining district within which said property and premises, including said vein, lode, or ledge, were and are situated, and that defendant afterwards and before it applied to enter and purchase said property and premises, including said vein, lode, or ledge, of the United States duly succeeded, by proper and legal mesne conveyances, to all the rights, privileges, and interests of said original locator in, to, and of all said property and premises.

VIII.

17 And said defendant, further answering, alleges that said South Spring Hill quartz mine (so afterwards, as hereinbefore alleged, granted and patented by the United States to this defendant on said 1st day of April, 1881) was, at the date of said original location thereof and at the date of the entry and purchase thereof by defendant of the United States as aforesaid, public mineral lands and a portion of the public domain of and belonged to the United States, and was subject to location, entry, and purchase under and according to the provisions of said Revised Statutes of the United States, chapter six, title thirty-two, and that defendant is now and ever since said 1st day of April, 1881, has been continuously the legal owner and proprietor, seized in fee of, and in the lawful possession and entitled to the possession of all of said mining property and premises (including said vein, lode, or ledge) so granted and patented to it, said defendant, by the United States on said 1st day of April, 1881, as hereinbefore alleged.

IX.

And, further answering, defendant alleges and shows unto the court that during all the time since the date of the said original location of said patented vein, lode, or ledge and property down to the date of said hereinbefore-mentioned patent the said defendant and the several persons through and under whom it, said defendant, obtained the right of location and possession of and the right to
18 enter and purchase said patented property and premises (in-

cluding said vein, lode, or ledge) fully complied with all the provisions and requirements of said Revised Statutes of the United States, chapter six, title thirty-two, and with all the requirements of the laws, customs, rules, and regulations of miners in said mining district and with all the laws of the State of California applicable thereto, and that at the date when defendant applied to enter and purchase said afterwards patented property of the United States and at the date of said patent thereof this defendant was lawfully entitled to purchase the same and to receive said patent thereof.

X.

And defendant further alleges, upon and according to its information and belief, that under and by virtue of said hereinbefore-mentioned patent and the terms thereof and under and by virtue of the provisions of said Revised Statutes, chapter six, title thirty-two, and all other laws applicable thereto this defendant was and is given, granted, and secured the right to the possession and enjoyment of its said mineral vein, lode, or ledge, both inside the boundary or surface lines (extended downward vertically) of the property and premises so as aforesaid conveyed and patented to it, said defendant, by the United States on said 1st day of April, 1881, and also the right to the possession and enjoyment to its entire depth of all of said vein, lode, or ledge outside of the boundary or surface side lines (ex-
19 tended downward vertically) of said patented property and in any and all lands into which said vein, lode, or ledge might or may be found to extend, with the right, privilege, and license to enter into and upon (but beneath the surface of) any and all such lands for the purpose of extracting, mining, and removing therefrom, but beneath the surface thereof, all of such vein, lode, or ledge and every part and portion thereof as might or may be found to extend into such lands beneath the surface thereof.

XI.

And defendant further alleges and shows unto the court that the property and premises described in plaintiff's complaint adjoins the said property and premises of the defendant at a point on the easterly side of the latter at a distance of about two hundred and forty feet southeasterly from the northeasterly corner of said defendant's said patented property and premises; that the top or apex of the said mineral vein, lode, or ledge belonging and so as aforesaid patented to defendant by the United States on said 1st day of April, 1881, is situated within the exterior surface lines of defendant's said patented property and premises; that said vein, lode, or ledge is gold-bearing and contains gold in considerable quantities, and from its said top or apex downward into the earth said vein, lode, or ledge dips and extends eastward under ground at an angle of about sixty degrees from a perpendicular, and defendant alleges, upon
20 and according to its information and belief, that said vein, lode, or ledge dips and extends outside of the easterly surface side line (extending downward vertically) of defendant's said

patented property and premises and into the land and premises described in plaintiff's complaint at a depth of about eight hundred feet below the surface of said last-mentioned land and premises and continues to dip and extend eastward from said last-mentioned point (and below the surface of the land and premises described in plaintiff's complaint) at the same angle, but how far this defendant is unable to state or determine for the reason that as yet the same is unexplored beyond said point easterly.

XII.

And defendant further alleges that it is now and for more than four years last past continuously has been engaged in working its said mine, vein, lode, or ledge in extracting and removing the gold-bearing ore, rock, and other vein matter therefrom; and defendant alleges, upon and according to its information and belief, that in so working the same it has recently followed said vein, lode, or ledge from within the boundary surface lines of its, said defendant's, said patented property and premises across and beyond the easterly surface side line (extending downward vertically) of said last-mentioned property and premises into the adjoining land and
21 premises (but beneath the surface thereof at a depth of about eight hundred feet) described in plaintiff's complaint, but wholly upon and within and not outside of said vein, lode, or ledge belonging to said defendant; and defendant denies, upon and according to its information and belief, that it has or had at the date of the commencement of this action entered upon or ousted or ejected said plaintiff from any part or portion of the property or premises described in plaintiff's complaint, other than that portion of the said vein, lode, or ledge (belonging to and so as aforesaid granted and patented to defendant) which extends as aforesaid into and intersects the land and premises (but about eight hundred feet below the surface thereof) described in said complaint.

XIII.

And defendant denies, upon and according to its information and belief, that the property described in plaintiff's complaint is of the value of one million dollars or of any greater value than five thousand dollars, and denies that there is any other lode or lodes contained or existing within the property and premises described in plaintiff's complaint than the said vein, lode, or ledge belonging and so as aforesaid patented to this defendant, which, as hereinbefore stated and shown, extends thereinto from the said property and premises of said defendant.

XIV.

And defendant further alleges, upon and according to its
22 information and belief, that whatever right or rights, interest or interests, the said plaintiff now owns or possesses or has ever owned or possessed in, of, or to the property or premises de-

scribed in said complaint the same were originally obtained from and granted by the United States to the latter's grantee thereof in the month of September, 1876, and were and are subject to the right of any owner or proprietor of a vein or lode to extract and remove his or its ore from said property and premises so as aforesaid described in said complaint should said vein or lode be found to penetrate or intersect said premises last herein referred to, and particularly subject to the right of defendant to enter into and extract and remove its, said defendant's, ore in said vein, lode, or ledge from the property and premises (but beneath the surface thereof) described in said complaint.

XV.

And said defendant, further answering, denies, upon and according to its information and belief, that plaintiff is or was, at the date of the commencement of this action or at any other time, the owner of, seized in fee of, or in the possession of or entitled to the possession of any lode or lodes or lode bearing mineral contained or situated within the property or premises described in plaintiff's complaint, or that defendant has ever entered into or upon or ousted or ejected plaintiff from or retained or withheld from plaintiff (or the possession thereof) any part or portion of the premises or
23 property described in said complaint other than the mineral vein, lode, or ledge so patented to defendant by the United States as aforesaid, or that there is now existing within the boundaries of the property or premises described in said complaint any other mineral vein, lode, or ledge than that so as aforesaid patented by the United States to this defendant.

XVI.

And, finally, defendant denies, upon and according to its information and belief, that said plaintiff, by reason of all or any of the acts complained of or alleged in said complaint to have been committed by this defendant, *the plaintiff* has been damaged in any sum of money or at all, or that defendant has ever committed any waste, in any amount or at all, upon or within any of the property or premises described in said complaint.

Wherefore defendant demands judgment that plaintiff take nothing by this action, and that defendant have and recover judgment for its costs herein against said plaintiff.

EAGAN & RUST AND
A. C. ADAMS,
Attorneys for Defendant.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

Nahum Harwood, being duly sworn, deposes and says that
24 he is one of the officers, to wit, the vice-president, of The South Spring Hill Gold Mining Company, the defendant corpora-

tion in the foregoing and above entitled action, and makes this verification for and on behalf of said defendant corporation; that he has heard read the above and foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

NAHUM HARWOOD.

Subscribed and sworn to before me this 11th day of November, 1887.

[SEAL.] R. D. McELROY,
Notary Public.

We do hereby certify that, in our opinion, the above and foregoing answer is well founded in point of law.

EAGAN & RUST AND
A. C. ADAMS,
Attorneys for Defendant.

Endorsed: Service of the within answer admitted by copy this 12th day of November, 1887. Olney, Chickering & Thomas, attorneys for plaintiff. Filed November 12, 1887. L. S. B. Sawyer, clerk.

25 *Amended Answer.*

In the Circuit Court of the United States for the Ninth Circuit in and for the Northern District of California.

AMADOR MEDEAN GOLD MINING CO., a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of New York, Plaintiff,

vs.

THE SOUTH SPRING HILL GOLD MINING CO., a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of Maine, Defendant.

And now comes the defendant in the above-entitled action and, by leave of the court first had, makes and files this its amended answer herein; and, defending the wrongs and injuries complained of, for its said amended answer to said action and to plaintiff's complaint therein—

I.

Defendant denies, upon and according to its information and belief, that plaintiff is or was at the date of the commencement of said action or at any other time the owner of, seized in fee of, or in the possession or entitled to the possession of any lode or lodes
26 or lode bearing mineral contained or situated within the property or premises described in plaintiff's said complaint.

II.

And defendant, further answering, denies, upon and according to its information and belief, that it, said defendant, either at the time stated in said complaint or at any other time, entered into or upon or ousted or ejected plaintiff from or now retains or withholds or ever retained or withheld from plaintiff any part or portion of the premises or property described in said complaint or the possession thereof, except that portion of a certain mineral vein, lode, or ledge bearing gold which from without and from a westerly direction dips, intersects, and extends into and within the exterior surface lines of the property and premises described in said complaint and at a depth beneath the surface thereof of about eight hundred feet.

III.

And defendant, further answering, alleges, upon and according to its information and belief, that it, said defendant, now is and ever since on or about the 28th day of April, 1882, has been continuously the legal owner and proprietor of, seized in fee, in the lawful possession of, and entitled to the possession of all and every portion of the mineral vein, lode, or ledge last hereinabove mentioned.

IV.

27 And defendant, further answering, alleges that the *the* only entry it, said defendant, has ever made into or upon the said last-mentioned mineral vein, lode, or ledge, and the only ouster or ejection by defendant of plaintiff therefrom, and the only retention or withholding of the same or the possession thereof from plaintiff by defendant within the exterior boundary of the property described in said complaint consisted and consists in defendant's lawfully following and working said mineral vein, lode, or ledge last mentioned by means of a drift or tunnel run by defendant from a certain incline shaft constructed by defendant within certain mining property and premises which continuously, ever since the 28th day of April, 1882, have belonged to and been in the exclusive possession of defendant, and which said property and premises, at a point on the easterly line thereof at a distance about three hundred and forty feet southeasterly from the northeasterly corner thereof, adjoins the property and premises described in said complaint, and which said drift or tunnel is wholly within said vein, lode, or ledge, and, together with said vein, lode, or ledge, extends from within said defendant's said mining property and premises into and which enters and intersects the land and premises described in plaintiff's complaint at a depth of about eight hundred feet beneath the surface thereof, said vein, lode, or ledge having and maintaining an average angle of about thirty degrees from a perpendicular; that said drift or tunnel enters said property and premises described in plaintiff's
28 complaint at or about at the said point of conjunction of the latter with the mining property and premises of defendant hereinbefore mentioned, and that said vein, lode, or ledge does

not at any place approach any nearer to the surface of the land and premises described in said complaint than at a distance of about eight hundred feet under ground.

V.

And defendant, further answering, denies, upon and according to its information and belief, that by reason of defendant's said entry into and upon said last-mentioned mineral vein, lode, or ledge or any part thereof, and the ouster and ejection by defendant of plaintiff therefrom, and defendant's withholding and retaining the same and the possession thereof from plaintiff, or by reason of any entry of defendant into or upon and the ouster and ejection of plaintiff from and defendant's withholding and retaining from plaintiff any portion of the property or premises described in said complaint or the possession thereof, or by reason of an entry of defendant into or upon or any ouster or ejection of plaintiff by said defendant from or any withholding or retaining from plaintiff by defendant any portion of the property or premises described in said complaint or the possession thereof, or by reason of any act or thing complained of in said complaint, or by reason of any act or thing ever done, performed, or committed by said defendant, said plaintiff has been damaged in the sum of $300,000 in money (or in any other thing), or in any other sum whatever, or at all; and said defendant
29 denies, upon and according to its information and belief, that it, said defendant, has ever committed any waste upon or within any of the property or premises described in said complaint in the amount of $300,000, or in any other amount or sum whatever, or at all.

VI.

And defendant, further answering, for a second, further, and other defense to said complaint and said action, alleges and shows unto the court that on or about the 1st day of April, 1881, and under, by virtue of, subject to, in pursuance of, and in compliance with the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, there was duly granted, conveyed, and patented to this defendant's immediate grantor, South Spring Hill Mining Company, a corporation duly organized and then existing under and by virtue of the laws of the State of California, by the United States (by patent in writing bearing date the said 1st day of April, 1881), all that certain mining property and premises commonly known as the "South Spring Hill quartz mine," consisting of a certain gold-bearing mineral vein, lode, or ledge and certain surface land on each side of said vein, lode, or ledge (which did not and does not exceed three hundred feet in width on either side thereof), situated in Amador county and State of California easterly from and adjoining the "Keystone Gold quartz mine" and extending from the southerly boundary line of the "Spring Hill and Geneva
30 qold quartz mine" (so called) southeasterly along the general course of said mineral vein, lode, or ledge a distance of fifteen hundred feet.

VII.

That said patent was issued upon the application of said South Spring Hill Mining Company, which entered and paid for the property, premises, and lode described in said last-mentioned patent in the office of the United States land office at Sacramento, in the State of California, on the 3rd day of November, 1880.

VIII.

That the said property, premises, and lode in said patent described were originally duly located on the 18th day of July, 1876, by one Wm. L. McKim (who then and there was a citizen of the United States, over the age of twenty-one years, and otherwise legally entitled to make such location) under, by virtue of, in pursuance to, and in compliance with the provisions and requirements of the Revised Statutes of the United States, chapter six, title thirty-two, and in compliance with all the requirements of the laws, customs, rules, and regulations of miners in force in the mining district within which said property, premises, and lode in said last-mentioned patent described were and are situated, and that before 3rd day of November, 1880, the said South Spring Hill Mining Company, by good and sufficient mesne conveyances, duly acquired all the rights, privileges, and interests of said Wm. L. McKim in, to, and of all said property, premises, and lode theretofore owned and possessed
31 by the latter and described in said patent, and in, to, and of said original location of said mining property.

IX.

That said application of said South Spring Hill Mining Company was founded upon the said original location of said property, premises, and lode in said last-mentioned patent described (made by said Wm. L. McKim, as aforesaid); that at the time of making said application said applicant duly filed in said land office in said city of Sacramento its said application, duly verified (and which showed a full compliance with the terms of said Revised Statutes of the United States, chapter six, title thirty-two), together with a proper plat and field-notes of the claim, property, premises, and lode in said patent described (made under the directions of the United States surveyor general), showing accurately the boundaries of said mining claim, to wit, the property, premises, and lode described in said patent; that said applicant also did and performed all other acts and things at the time and times and in the manner required of it, said applicant, by the terms of said Revised Statutes of the United States, chapter six, title thirty-two, in order to entitle said applicant to said patent, and that due proofs thereof were duly made and filed in the proper office in due and proper time, and that all other acts and things required by said Revised Statutes, chapter six,
32 title thirty-two (either of said applicant, the officers of said land office, or any other person or persons), in the premises were also each and all duly done and performed by them severally

at the time and times and in the manner required by said Revised Statutes, chapter six, title thirty-two, and that due proofs thereof were duly made and filed in the proper office in due and proper time.

X.

That during all the time since the said original location of said property, premises, and lode described in said last-mentioned patent was so made as aforesaid down to the issuance of said patent the said South Spring Hill Mining Company and the several persons through and under whom it acquired said right of location and possession of and the right to enter and purchase said property, premises, and lode in said patent described fully complied severally with all the provisions and requirements of said Revised Statutes of the United States, chapter six, title thirty-two, and with all the laws, customs, rules, and regulations of miners in said mining district, and with all the laws of the State of California applicable thereto; that at the date when said South Spring Hill Mining Company made and filed its said application in the said land office at Sacramento as aforesaid said applicant was lawfully entitled to receive said last-mentioned patent for the property, premises, and lode in said patent described, and that at the date of said original location of
33 said mining claim and thenceforth down to the date of said application for said patent therefor the same was public mineral lands and a portion of the public domain of the United States subject to location, entry, and purchase under and according to the provisions of said Revised Statutes, chapter six, title thirty-two.

XI.

That on the 28th day of April, 1882, said South Spring Hill Mining Company, by a good and sufficient deed of conveyance thereof, duly conveyed to the defendant herein all the property and premises in said patent described.

XII.

That ever cince said 18th day of July, 1876, said defendant or its grantors have been entitled to and in the possession of said lode and premises in said last-mentioned patent described, possessing all the rights of said original locator therein down to the date of the said application of said South Spring Hill Mining Company for said last-mentioned patent, and thereafter possessing all the rights therein granted to said South Spring Hill Mining Company by said patent of April 1st, 1881, and that said defendant is now and ever since said 28th day of April, 1882, has been the owner of, entitled to the possession of, and in the lawful possession of all said property, premises, and lode described in said patent so as aforesaid issued to said South Spring Hill Mining Company on the 1st day of April, 1881.

34 XIII.

And defendant further alleges, upon and according to its information and belief, that under and by virtue of said hereinbeforementioned patent and the terms thereof, and under and by virtue of the provisions of said Revised Statutes of the United States, chapter six, title thirty-two, and all other laws applicable thereto, this defendant's said immediate grantor (and this defendant as the former's successor in interest therein) was and is given, granted, and secured the right to the possession and enjoyment of said mineral vein, lode, or ledge, both inside the boundary or surface lines (extended downward vertically) of the property and premises so as aforesaid conveyed and patented to said South Spring Hill Mining Company by the United States on said 1st day of April, 1881, and also the right to the possession and enjoyment to its entire depth of all of said vein, lode, or ledge outside of the boundary or surface side lines (extended downward vertically) of said patented property and in any and all lands into which said vein, lode, or ledge might or may be found to extend, with the right, privilege, and license to enter into and upon (but beneath the surface of) any and all such lands for the purpose of extracting, mining, and removing therefrom, but beneath the surface thereof, all of such vein, lode, or ledge and every part and portion thereof as might or may be found to extend into such lands beneath the surface thereof.

35 XIV.

And defendant further alleges and shows unto the court that the property and premises described in plaintiff's complaint adjoins the said property and premises of defendant (so patented to said South Spring Hill Mining Company, as hereinbefore alleged) at a point on the easterly side of the latter at a distance of about three hundred and forty feet southeasterly from the northeasterly corner of defendant's said premises; that the top or apex of defendant's said vein, lode, or ledge lies and is situated within the exterior surface boundary lines (extends downward vertically) of defendant's said premises; that said vein, lode, or ledge is gold bearing and contains gold in considerable quantities, and from its said top or apex downward into the earth dips and departs from a perpendicular in an easterly direction at an average angle of thirty degrees, and in thus dipping and departing from a perpendicular extends beyond and outside of the easterly vertical side line of said surface location of said property and premises so, as hereinbefore alleged, patented to said South Spring Hill Mining Company and into the adjoining land and premises described in plaintiff's complaint at a depth of about eight hundred feet below the surface of the latter, and from its said intersection therewith said vein or lode continues to thus dip and extend easterly into the last-mentioned land and premises at the same angle, but how far this defendant is unable to
36 state or determine, for the further reason that as yet the same is unexplored beyond said point easterly.

XV.

And defendant further alleges that it is now and for more than four years last past it has been continuously engaged in working its said mine, lode, or vein in extracting and removing the gold-bearing ore, rock, and other vein matter therefrom; that in so working the same defendant has followed said vein or lode from its said top or apex downward into the earth (in its said dip and departure from a perpendicular) beyond and outside of the easterly vertical side line of said surface location of said property and premises so, as hereinbefore alleged, patented to said South Spring Hill Mining Company and therefrom (by means of a drift or tunnel run by defendant from an incline shaft belonging to and constructed by defendant within its said property and premises) into the adjoining land and premises described in plaintiff's complaint at a depth of about eight hundred feet below the surface of the latter, but wholly within and not outside of said defendant's said vein or lode so, as hereinbefore alleged, patented to said South Spring Hill Mining Company on the 1st day of April, 1881, and subsequently thereto by the latter conveyed to defendant, as hereinbefore alleged; and defendant denies, upon and according to its information and belief, that it has or had at the date of the commencement of this action entered upon or ousted or ejected said plaintiff from any part or portion of the property
37 or premises described in plaintiff's complaint other than that portion of the said vein, lode, or ledge belonging to defendant (and so, as hereinbefore alleged, granted and patented to defendant's said immediate grantor, said South Spring Hill Mining Company) which, as hereinbefore alleged, from the top or apex of said vein or lode downward into the earth dips and departs from a perpendicular and thus extends beyond and outside of the easterly vertical side line of the said surface location of said defendant's said patented premises into and penetrates and intersects the land and premises (but about eight hundred feet below the surface thereof) described in said complaint.

XVI.

And defendant further alleges and shows unto the court that the said part or portion of defendant's said vein or lode which, as hereinbefore alleged, from the said top or apex of said vein or lode dips and departs from a perpendicular and thus extends beyond and outside the vertical side line of the said surface location of said defendant's said patented premises and into the lands and premises described in plaintiff's complaint is situated between vertical planes drawn downward through the end lines of said lode and premises (so, as hereinbefore alleged, patented to defendant's said immediate grantor, said South Spring Hill Mining Company) so continued in their own direction that such planes will intersect said exterior part or portion of said vein or lode, and that all portions of said
38 vein or lode ever removed by defendant from within the boundary of the property and premises described in plain-

tiff's complaint were also situated between said vertical planes when thus removed.

XVII.

And defendant, further answering, denies, upon and according to its information and belief, that plaintiff is, or was at the date of the commencement of this action or at any other time, the owner of, seized in fee of, or in the possession of or entitled to the possession of any lode or lodes or lode bearing mineral contained or situated within the property or premises described in plaintiff's complaint, or that defendant has ever entered into or upon or ousted or ejected plaintiff from or retained or withheld from plaintiff any part or portion of the premises or property described in said complaint (or the possession thereof) other than the said mineral vein, lode, or ledge of defendant so patented to defendant's said immediate grantor, South Spring Hill Mining Company, by the United States, as hereinbefore alleged, or that there is now existing or that there ever was within the boundaries of the property or premises described in said complaint any mineral vein, lode, or ledge other than the vein, lode, or ledge of defendant so, as hereinbefore alleged, patented by the United States to this defendant's said immediate grantor and by the latter since conveyed to said defendant which, as hereinbefore alleged, from its said top or apex downward dips and extends
39 from the patented premises of defendant into the land and premises described in plaintiff's complaint.

XVIII.

And defendant further alleges, upon and according to its information and belief, that whatever right or rights, interest or interests, the said plaintiff now owns or possesses or has ever owned or possessed in, of, or to the property or premises described in said complaint the same were originally obtained from and granted by the United States to the plaintiff's grantor, one Calvin Hammock, in the month of September, 1876, and were and are subject to the right of any owner or proprietor of a vein or lode to extract and remove his or its ore from said property and premises described in said complaint should said vein or lode be found to penetrate or intersect said premises last herein referred to, and particularly subject to the right of said defendant's said immediate grantor and of said defendant, as the former's successor in interest, to enter into and extract and remove the ore, gold-bearing rock, and other vein matter in said vein, lode, or ledge from the property and premises (but beneath the surface thereof) described in said complaint.

XIX.

And, finally, defendant denies, upon and according to its information and belief, that the premises and lodes mentioned and described in plaintiff's complaint are or were at the date of the com-

mencement of this action of the value of one million dollars
40 or of any other or greater value than five thousand dollars; and defendant denies that by reason of all or any of the acts complained of or alleged in said complaint to have been committed by this defendant the plaintiff has been damaged in the sum of three hundred thousand dollars in money or in any other sum or at all, or that defendant has ever committed any waste in the amount of three hundred thousand dollars or in any other amount or at all upon or within any of the property or premises described in said complaint.

Wherefore defendant demands judgment that plaintiff take nothing by this action, and that defendant have and recover judgment for its costs herein against said plaintiff.

EAGAN & RUST AND
A. C. ADAMS,
Attorneys for Defendant.

STATE OF CALIFORNIA, }
County of Amador, } ss:

Nahum Harwood, being duly sworn, deposes and says that he is one of the officers, to wit, the vice-president, of The South Spring Hill Gold Hill Mining Company, the defendant corporation in the foregoing and above entitled action, and makes this verification for and on behalf of said defendant corporation; that he has heard read the above and foregoing amended answer and knows the
41 contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

NAHUM HARWOOD.

Subscribed and sworn to before me this 17th day of January, 1888.
[SEAL.] J. S. PORTER,
Notary Public.

We do hereby certify that, in our opinion, the above and foregoing amended answer is well founded in point of law.

EGAN & RUST AND
A. C. ADAMS,
Attorneys for Defendant.

Endorsed: Service of the within amended answer admitted by copy this 23d day of January, 1888. Olney, Chickering & Thomas, attorneys for plaintiff. Filed January 23, 1888. L. S. B. Sawyer, clerk.

42 *Findings.*

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

AMADOR MEDEAN GOLD MINING COMPANY
vs.
SOUTH SPRING HILL GOLD MINING COMPANY. } No. 5207.

This cause coming on to be heard by the court without a jury, a trial by jury having been duly waived by stipulation in writing filed in the case, Messrs. Olney, Chickering and Thomas appearing for plaintiff and A. C. Adams and Messrs. Eagan and Rust appearing for the defendant, and the case having been submitted for decision upon an agreed statement of facts and argued by counsel, and the court, being sufficiently advised, now finds the facts to be as set forth in the agreed statement of facts, which is as follows, to wit:

43 In the Circuit Court of the United States for the Ninth Circuit in and for the Northern District of California.

AMADOR MEDEAN GOLD MINING COMPANY, a Corporation Duly Organized and Existing Under and by Virtue of the Laws of the State of New York, Plaintiff,
vs.
SOUTH SPRING HILL GOLD MINING COMPANY, a Corporation Duly Organized and Existing Under and by Virtue of the Laws of the State of Maine, Defendant.

Agreed Statement of Facts.

It is hereby stipulated and agreed in the above-entitled cause that said cause shall be tried upon the following agreed statement of facts and such other facts as are implied therefrom, and that, for the trial of this cause, said facts shall be considered the same as though they had been established by testimony given upon said trial, to wit:

On the 13th day of September, 1876, the United States of America issued its patent in the words and figures as follows, to wit:

44 "The United States of America to all to whom these presents shall come, Greeting:

"Whereas, in pursuance of the act of Congress approved March 3rd, 1855, entitled An act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States, there has been deposited in the General Land Office warrant No. 61496, for 120 acres, in favor of James Galloway, private, Captain Pugh's company, Virginia militia, war 1812, with evidence that the same has been duly located upon the fractional west half of the southwest quarter, the fractional southeast quarter of the southwest quarter, and the southwest quarter of the southeast quarter of section thirty-one, in township seven

north, of range eleven east, in the district of lands subject to sale at Sacramento, California, containing one hundred and thirty-six acres and seventy-two hundredth- of an acre (excess paid as per receiver's receipt No. 1289), according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general, the said warrant having been duly assigned to Calvin Hammack, in whose favor said tract has been located:

"Now, know ye that there is therefore granted by the United States unto the said Calvin Hammack, as assignee as aforesaid, and to his heirs the tract of land above described:

45 "To have and to hold the said tract of land, with the appurtenances thereof, unto the said Calvin Hammack, as assignee as aforesaid, and to his heirs and assigns forever, subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of a proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

"Dated September 13th, 1876.

"By the President:

"(Signed) [SEAL.] U. S. GRANT,

"By WM. H. CROOK,

"*Secretary.*

"S. W. CLARK,

"*Recorder of the General Land Office.*"

II.

That said patent was issued upon the application of said Calvin Hammack, who entered and paid for the land described in said patent in the United States land office at Sacramento, California, on the 15th day of June, 1874.

III.

That said patent was duly recorded in the office of the re-
46 corder of Amador county, State of California, on the 13th day of July, 1882, in Book "A" of Agricultural Patents, page 702.

IV.

That the land described in the complaint in this action is a portion of the premises embraced in the said patent. Said land is described as follows, to wit:

Beginning at the quarter-section corner between sections thirty-one (31) and thirty-six (36), on the township line between township seven north, range ten (10) east and eleven (11) east, Mount Diablo base and meridian, thence south, variation sixteen (16) degrees thirty-five (35) minutes east, along said township line to its intersection with the easterly line of the South Spring Hill quartz mine;

thence south forty-one (41) degrees thirty-one (31) minutes east along the easterly line of said South Spring Hill quartz mine to its intersection with the westerly line of the Medean quartz mine; thence north ten (10) degrees fifteen (15) minutes west along the westerly line of said Medean quartz mine fifteen and $\frac{9}{100}$ (15.09) chains to the northwest corner of said Medean quartz mine; thence north seventy-nine (79) degrees forty-eight (48) minutes east four and fifty-four hundredths (4.54) chains along the northerly boundary of said Medean quartz mine to the northeasterly corner thereof; thence due north two and $\frac{10}{100}$ (2.10) chains to the quarter-section line running east and west through the center of section thirty-one (31), township seven (7) north, range eleven (11) east, Mount
47 Diablo base and meridian; thence west along said quarter-section line six and $\frac{31}{100}$ (6.31) chains to the place of beginning.

V.

That after the issuance of said patent — said Calvin Hammack, to wit, on the 22nd day of May, 1884, the plaintiff, by proper mesne conveyances, acquired said Hammack's title to said last-described portion of said patented premises, and is now and at all times since said 22nd day of May, 1884, has been the owner, entitled to, and in the possession of all rights acquired by said Hammack in and to said portion of said premises as conveyed by and described in said patent.

VI.

That on the 1st day of April, 1881, the United States issued its patent to the South Spring Hill Mining Company, a corporation duly organized and existing under the laws of the State of California, in the words and figures as follows, to wit:

"General Land Office No., 4580; mineral certificate No. 758.

"The United States of America to all to whom these presents shall come, Greeting:

"Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of the South Spring Hill Mining Company upon the South Spring Hill quartz mine,
48 accompanied by the certificate of the register of the land office at Sacramento, in the State of California, whereby it appears that in pursuance of the said Revised Statutes of the United States the South Spring Hill Mining Company did, on the third day of November, A. D. 1880, enter and pay for said mining claim or premises, being mineral entry No. 758 in the series of said office, designated by the surveyor general as lot No. 80, embracing a portion of section thirty-six (36), in township seven (7) north, of range ten (10) east, Mount Diablo meridian, in the Amador mining district, in the county of Amador and State of California, in the dis-

trict of lands subject to sale at Sacramento, containing nine (9) acres and sixty-one hundredths ($\frac{61}{100}$) of an acre of land, more or less, and, according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variations at sixteen (16) degrees fifty-seven (57) minutes east, to wit: Beginning at the northwest corner of the claim, a post marked 'S. S. H. 2' and '42 & 45,' at intersection of southerly boundary of lot No. 40, patented to the Keystone Consolidated Mining Company with its claim upon the Spring Hill and Geneva lode, and easterly boundary of lot No. 38, patented to the Keystone Consolidated Mining Company with its claim upon the Keystone gold quartz mine, from which a live-oak five (5) inches in diameter, marked 'B. T.,' bears south seventy-six (76) degrees fif-
49 teen (15) minutes west at the distance of fifteen (15) links; thence from said post, along easterly boundary of said lot No. 38, south forty-one (41) degrees twenty-five (25) minutes east three (3) chains and ninety-one (91) links to a point from which the northwest corner of a shaft bears south eighty-five (85) degrees fifty (50) minutes east at a distance of two (2) chains and thirty-seven (37) links, seven (7) chains and seventy-five (75) links to a stake on north boundary of R. Fretley's location, eight (8) chains to small ravine twelve (12) chains and forty (40) links to French gulch, fourteen (14) chains and ninety (90) links across said gulch, sixteen (16) chains and forty (40) links to a point on boundary between township seven (7) north, of range ten (10) and eleven (11) east, Mount Diablo meridian, from which the corner common to township- six (6) and seven (7) north of said ranges bears south at the distance of thirteen (13) chains and thirty-two (32) links, and a shaft bears north thirty-eight (38) degrees thirty (30) minutes east at the distance of one (1) chain and fifty-six (56) links, seventeen (17) chains and eighty-one (81) links to a stone post at the southeast corner of said lot No. 38, marked 'S. S. H. 3,' being also the northeast corner of lot No. — (61), patented to James Morgan *et al.* with their claim upon the South Keystone lode, from which a blazed white oak three (3) inches in diameter bears north eight (8) degrees forty-five (45) minutes west at the distance of twenty-seven (27) links; thence from said post, along easterly boundary of said
50 lot No. 61, south forty-three (43) degrees fifty (50) minutes east four (4) chains and ninety-one (91) links to the southwest corner of the claim, a post marked 'S. S. H. 4,' from which a blazed pine eight (8) inches in diameter bears south eighty-seven (87) degrees forty-five (45) minutes east at the distance of one (1) chain and forty (40) links; thence from said post north fifty-six (56) degrees twenty (20) minutes east four (4) chains and fifty-four (54) links to a post at south end of lode, marked 'L. P.' from which a stake at angle of lode bears north forty-three (43) degrees fifty (50) minutes west at the distance of four (4) chains and ninety-one (91) links, four (4) chains and sixty-nine (69) links to the southeast corner of the claim, a post marked 'S. S. H. 5' on easterly boundary of lot No. 42, patented to Amanda C. Harris with her claim upon the Herbertville quartz mine, from which a pine eight (8) inches in di-

ameter, marked 'B. T.,' bears south thirteen (13) degrees five (5) minutes west at a distance of sixty (60) links; thence from said post, along westerly boundary of said lot No. 42, north forty (40) degrees twenty-four (24) minutes west one (1) chain and fifteen (15) links to small gulch, six (6) chains and ninety (90) links to small gulch, seven (7) chains and twelve (12) links to a post marked 'S. S. H. 6,' at the northwest corner of said lot No. 42, from which a live-oak six (6) inches in diameter, marked 'B. T.,' bears south thirteen (13) degrees thirty-five (35) minutes east at the distance of seventy-two (72) links; thence from said post, along northerly boundary of said lot No. 42, north seventy-seven
51 (77) degrees forty-five (45) minutes east twenty (20) links to bed of small gulch, one (1) chain and sixty-eight (68) links to a post marked "S. S. H. 7," at the southwest corner of lot No. 37, patented to Frank Maxson with his claim upon the Medean lode, from which a live-oak eighteen (18) inches in diameter, marked "B. T. & M. M.," bears north twenty-five (25) degrees twenty-five (25) minutes east at the distance of fifty-eight (58) links; thence from said post, along westerly boundary of said lot No. 37, north nine (9) degrees thirty-five (35) minutes west twenty (20) links to small gulch, four (4) chains and ninety-five (95) links to a post marked "S. S. H. 8," from which a white oak eight (8) inches in diameter, marked "B. T.," bears south seventy-seven (77) degrees forty-five (45) minutes east at the distance of one (1) chain and seventeen (17) links; thence from said post north forty-one (41) degrees fifty (50) minutes west six (6) chains and sixty-four (64) links to a point on said township boundary from which the said township corner bears south at the distance of twenty-six (26) chains and eighty-six (86) links, eleven (11) chains and seventy-five (75) links to the northeast corner of the claim, a post marked "S. S. H. 9," from which a live-oak eight (8) inches in diameter bears south twenty-six (26) degrees fifteen (15) minutes west at the distance of eighty-one (81) links; thence from said post south fifty-six (56) degrees twenty (20) minutes west four (4) chains and fifty-four (54) links to a post at north end of lode, marked "L. P.," from which said stake at angle of lode bears south forty-one (41) degrees
52 twenty-five (25) minutes east at the distance of seventeen (17) chains and eighty-one (81) links, nine (9) chains and two (2) links to the place of beginning, containing nine (9) acres and sixty-one hundredths ($\frac{61}{100}$) of an acre of land, more or less, and embracing fifteen hundred (1,500) linear feet of the said South Spring Hill quartz mine, as represented by yellow shading in the following plat:"

53 Plat of the claim of the South Spring Hill Mining Company upon the South Spring Hill quartz mine, Amador mining district, Amador county, California, containing 9.61 acres.

(Here follows diagram marked p. 53.)

54 "Now know ye that the United States of America, in consideration of the premises and in conformity with the said Revised Statutes of the United States, have given and granted, and by these presents do give and grant, unto the said South Spring Hill Mining Company and to its successors and assigns the said mining premises hereinbefore described as lot No. 80, embracing a portion of section thirty-six (36), in township seven (7) north, of range ten (10) east, Mount Diablo meridian, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of fifteen hundred (1,500) linear feet of the said South Spring Hill quartz mine, vein, lode, ledge, or deposit for the length hereinbefore described throughout its entire depth, although it may enter the land adjoining; and also of all other veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: Provided, That the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will
55 intersect such exterior parts of said veins, lodes, ledges, or deposits, excepting and excluding, however, from these presents all that portion of the surface ground hereinbefore described lying within section thirty-one (31), in township seven (7) north, of range eleven (11) east, and known as lot No. 46: And provided further, That nothing in this conveyance shall authorize the grantee herein, its successors or assigns, to enter upon the surface of a mining claim owned or possessed by another; to have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said South Spring Hill Mining Company and to its successors and assigns forever, subject, nevertheless, to the following conditions and stipulations:

"First. That the grant hereby made is restricted to the land hereinbefore described as lot No. 80, with fifteen hundred (1,500) linear feet of the South Spring Hill quartz mine, vein, lode, ledge, or deposit for the length aforesaid throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depths as aforesaid, the tops or apexes of which lie inside the exterior lines of said survey; second, that the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit the top or apex of which lies outside the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted,
56 for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit; third, that the premises

hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts; fourth, that, in the absence of necessary legislation by Congress, the Legislature of California may provide rules for working the mining claims or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

"In testimony whereof I, James A. Garfield, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

"Given under my hand, at the city of Washington, the first day of April, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and fifth.

"By the President:

"[SEAL.] JAMES A. GARFIELD,

"By WM. H. CROOK, *Secretary.*

"S. W. CLARK,

"*Recorder of the General Land Office.*

"Recorded Vol. 57, pages 186 to 192, inclusive. Examined."

57 7.

That said last-mentioned patent was issued upon the application of said South Spring Hill Mining Company, which entered and paid for the property, premises, and lode granted and conveyed by said last-mentioned patent in the office of the United States land office at Sacramento, in the State of California, on the 3rd day of November, 1880.

8.

That the said property, premises, and lode by said last-mentioned patent granted and conveyed were originally duly located on the 18th day of July, 1876, by one Wm. L. McKim (who then and there was a citizen of the United States, over the age of twenty-one years, and otherwise legally entitled to make such location) under, by virtue of, in pursuance to, and in compliance with the provisions and requirements of the Revised Statutes of the United States, chapter six, title thirty-two, and in compliance with all the requirements of the laws, customs, rules, and regulations of miners in force in the mining district within which said property, premises, and lode by said last-mentioned patent granted and conveyed were and are situated, and that before the said 3rd day of November, 1880, the said South Spring Hill Mining Company, by good and sufficient mesne conveyances, duly acquired all the rights, privileges, and interests of said Wm. L. McKim in, to, and of all said property, premises, and lode theretofore owned or possessed by the latter and granted and conveyed by said last-mentioned patent and in, to, and of said original locations thereof.

58 9.

That said application of said South Spring Hill Mining Company was founded upon the said original location of said property, premises, and lode by said last-mentioned patent granted and conveyed (made by Wm. L. McKim as aforesaid); that at the time of making said application said applicant duly filed in said land office, in said city of Sacramento, its said application, duly verified, which showed a full compliance with the terms of said Revised Statutes of the United States, chapter six, title thirty-two, together with a proper plat and field-notes (made under the direction of the United States surveyor general) of the claim, property, premises, and lode by said last-mentioned patent granted and conveyed, which showed accurately the boundaries of said mining claim, to wit, the property, premises, and lode granted and conveyed by said last-mentioned patent; that said applicant also did and performed all other acts and things and at the time and times and in the manner required of it, said applicant, by the terms of said Revised Statutes, chapter six, title thirty-two, in order to entitle said applicant to said last-mentioned patent, and that due proofs thereof were duly made and filed in the proper office in due and proper time, and that all other acts and things required by said Revised Statutes, chapter six, title thirty-two, either of said applicant-, the officers of said land office, or any other person or persons in the premises were also each and all duly done and performed by them severally at the time and times and in the manner required by said Revised Statutes,
59 chapter six, title thirty-two, and that due proofs thereof were duly made and filed in the proper office in due and proper time.

10.

That during all the time since the said original location of said property, premises, and lode granted and conveyed by said last-mentioned patent was so made as aforesaid down to the issuance of said patent the South Spring Hill Mining Company and the several persons through and under whom it acquired said right of location and possession of and the right to enter and purchase said property, premises, and lode by said last-mentioned patent granted and conveyed fully complied severally with all the provisions and requirements of said Revised Statutes of the United States, chapter six, title thirty-two, and with all the laws, customs, rules, and regulations of miners in said mining district, and with all the laws of the State of California applicable thereto; that at the date when said South Spring Hill Mining Company made and filed its said application in the said land office at Sacramento, as aforesaid, said applicant was lawfully entitled to enter and purchase and to receive said last-mentioned patent for the property, premises, and lode by said patent granted and conveyed.

11.

That said last-mentioned patent was duly recorded in the office of the recorder of Amador county, State of California, on the 25th day

of May, 1881, in Book "A" of Quartz Mineral Patents, pages 37 *et seq.*, records of Amador county.

60

12.

That on the 28th day of April, 1882, said South Spring Hill Mining Company, by a good and sufficient deed of conveyance thereof, duly conveyed to the defendant herein all the property and premises by said last-mentioned patent granted and conveyed, and which deed of conveyance was, on the 14th day of July, 1882, duly recorded in the office of the county recorder of Amador county, State of California, in Book "V" of Deeds, pages 141 *et seq.*, records of Amador county.

13.

That ever since said 18th day of July, 1876, said defendant or its grantors have been entitled to and in the possession of such lodes and premises as were by said last-mentioned patent granted and conveyed, possessing all the rights of said original locator therein, down to the date of the said application of said South Spring Hill Mining Company for said last-mentioned patent, and thereafter possessing all the rights therein granted to said South Spring Hill Mining Company by said patent of April 1st, 1881, and that said defendant is now and ever since the 28th day of April, 1882, has been the owner of said lode and premises as granted and conveyed by said last-mentioned patent.

14.

That the plat or diagram contained in the copy of the patent hereinbefore set out (issued to South Spring Hill Mining Company April 1st, 1881) correctly represents the premises and property granted and conveyed by said patent, and that the portion
61 thereof colored blue also correctly represents the property and premises described in plaintiff's complaint.

15.

That the property and premises of plaintiff adjoins the said property and premises of defendant (so as aforesaid patented to said South Spring Hill Mining Company) at a point on the easterly side of the latter at a distance of about three hundred and forty feet southeasterly from the northeasterly corner of defendant's said premises; that the top or apex of said vein, lode, or ledge lies and is situated within the exterior surface boundary lines (extended downward vertically) of defendant's said premises; that said vein or lode is gold-bearing and contains gold in considerable quantities, and from its said top or apex downward into the earth dips and departs from a perpendicular (in an easterly direction) at an average angle of thirty-five degrees, and in thus dipping and departing from a perpendicular extends beyond and outside of the easterly vertical side line of said surface location of said property

and premises so as aforesaid patented to said South Spring Hill Mining Company and into the adjoining land and premises described in plaintiff's complaint at a depth of about eight hundred feet below the surface of the latter, and from said last-mentioned point continues to thus dip and extend easterly into the land and premises described in plaintiff's complaint.

16.

That for more than four years last past defendant has been continuously engaged in working its said mine, vein, or lode, in
62 extracting and removing the gold-bearing ore, rock, and other vein matter therefrom; that in so working the same defendant has followed said vein or lode from its said top or apex downward into the earth (in its said dip and departure from a perpendicular) beyond and outside of the easterly vertical side line of said surface location of said property and premises so as aforesaid patented to said South Spring Hill Mining Company and therefrom (by means of a drift or tunnel run by defendant from an inclined shaft belonging to and constructed by defendant within its said property and premises) into the adjoining land and premises described in plaintiff's complaint at a depth of about eight hundred feet below the surface of the latter, but wholly within and not outside of said vein or lode (so as aforesaid patented to said South Spring Hill Mining Company April 1st, 1881, and subsequently thereto conveyed by the latter to defendant), and has thus removed within one year last past of said vein or lode from within the premises described in plaintiff's complaint one hundred and ten (110) tons, and that the value of the same is two hundred (200) dollars.

17.

That the said part or portion of defendant's said vein or lode which, as hereinbefore stated, dips and extends from the top or apex of said vein or lode outside of and beyond the easterly vertical side line of said surface location of said defendant's said property and premises and into the land and premises described in plaintiff's complaint lies and is situated between vertical planes drawn downward through the end lines of said surface location of said
63 lode and premises (so as aforesaid patented to defendant's said immediate grantor, said South Spring Hill Mining Company), so continued in their own direction that such planes will intersect said exterior part or portion of said vein or lode, and that the portions of said vein or lode so removed by defendant from within the boundaries of the property and premises described in said complaint, as hereinbefore stated, were also lying and situated between said vertical planes last mentioned when thus removed, at a point immediately east of and adjoining the easterly vertical side line of said surface location of said defendant's said patented property and premises and distant southeasterly from the northeasterly corner of said last-mentioned surface location about three hundred and forty feet.

That the value of the property described in plaintiff's complaint is not less than $5,000.

Dated this 23rd day of February, 1888.

OLNEY, CHICKERING & THOMAS,
Attorneys for Plaintiff.

A. C. ADAMS AND
EAGAN & RUST, *Attorneys for Defendant.*

Endorsed: Filed July 23, 1888. L. S. B. Sawyer, clerk.

64 *Conclusions of Law. Finding.*

1. That plaintiff was seized in fee of the premises in question at the time of the commission of the acts by defendant complained of and at the commencement of this suit.

2. That the plaintiffs were ousted from their possession, as alleged in the complaint.

3. That plaintiff is entitled to a judgment for possession, as prayed for, and for two hundred dollars damages.

Let judgment be entered accordingly.

(Signed) LORENZO SAWYER,
Circuit Judge.

Endorsed: Finding. Filed Nov. 5, 1888. L. S. B. Sawyer, clerk.

65 *Certified Copy of Judgment.*

In the Circuit Court of the United States for the Ninth Circuit in and for the Northern District of California.

AMADOR MEDEAN GOLD MINING CO., a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of New York, Plaintiff,

vs.

THE SOUTH SPRING HILL GOLD MINING CO., a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of Maine, Defendant.

This cause having been regularly tried by the court upon the agreed statement of facts filed herein and stipulated by the respective counsel for said plaintiff and said defendant as the facts of said cause, and the findings of fact and conclusions of law and the decision thereon, in writing, having been duly rendered by the court, all of which are now on file in this cause, and judgment therein having been awarded in favor of the Amador Medean Gold Mining Company, plaintiff, against The South Spring Hill Gold Mining Company, defendant, and for costs against said The South Spring Hill Gold Mining Company, on motion of Messrs. Olney,
66 Chickering & Thomas, attorneys for the plaintiff—

It is now here considered—

That the plaintiff have have judgment as prayed for in its said complaint, on file herein, against the defendant for the possession of the land, lodes, and premises in said complaint described, and that the plaintiff be, and it is hereby, declared and adjudged to be entitled to the possession of the said land in said complaint described and hereinafter set out and every part and parcel thereof. Said premises are bounded and described as follows, to wit:

Beginning at the quarter-section corner between sections thirty-one (31) and thirty-six (36), on the township line between township seven (7) north, range ten (10) east and eleven (11) east, Mount Diablo base and meridian, thence south—variation sixteen (16) degrees thirty-five (35) minutes east—along said township line to its intersection with the easterly line of the South Spring Hill quartz mine; thence south forty-one (41) degrees thirty-one (31) minutes east along the easterly line of said South Spring Hill quartz mine to its intersection with the westerly line of the Medean quartz mine; thence north ten (10) degrees fifteen (15) minutes west along the westerly line of said Medean quartz mine fifteen and $\frac{9}{100}$ (15.09) chains to the northwest corner of said Medean quartz mine; thence north seventy-nine (79) degrees forty-eight (48) minutes east four and fifty-four hundredths (4.54) chains along the northerly boundary of said Medean quartz mine to the northeasterly corner thereof;

67 thence due north two and $\frac{10}{100}$ (2.10) chains to the quarter-section line running east and west through the center of section thirty-one (31), township seven (7) north, range eleven (11) east, Mount Diablo base and meridian; thence west along said quarter-section line six and $\frac{31}{100}$ (6.31) chains to the place of beginning, and also all minerals or lodes therein contained and all mineral therein contained and all lodes bearing mineral. Said lands, lodes, and premises are situate in the county of Amador, State of California.

And it is further considered—

That the plaintiff do have and recover from said defendant the value of the ore admitted to have been extracted from said lands, lodes, and premises by the said defendant, to wit, the sum of two hundred dollars, and that it further have and recover its costs, hereby taxed at one hundred and seventy-five dollars, against said defendant, with interest upon said sums from the date of this judgment.

Judgment entered this 12th day of November, 1888.

L. S. B. SAWYER, *Clerk.*

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the northern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original judgment entered November 12th, 1888, in the therein-entitled cause.

Attest my hand and the seal of said circuit court this 12th [SEAL.] day of November, A. D. 1888.

L. S. B. SAWYER, *Clerk.*

Endorsed: Filed November 12, 1888. L. S. B. Sawyer, clerk.

68 *Clerk's Certificate.*

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

AMADOR MEDEAN GOLD MINING COMPANY
vs.
SOUTH SPRING HILL GOLD MINING COMPANY. } No. 5207.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

Attest my hand and the seal of said circuit court this 12 [SEAL.] day of November, 1888.

L. S. B. SAWYER, *Clerk*,
By F. D. MONCKTON,
Deputy Clerk.

Endorsed: Judgment-roll. Filed November 12th, 1888. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

69 AMADOR MEDEAN GOLD MIN. CO.

v.

SOUTH SPRING HILL GOLD MIN. CO. *et al.*

(Circuit Court, N. D. California. November 5, 1888.)

1. Mines and mining—mining lodes—dipping into agricultural lands.—An owner under a patent of mineral lands, including a gold-bearing vein or lode having its apex within the boundaries of the land patented, is not entitled to follow his vein or lode down on the dip, across his exterior boundaries, into the lands of an adjacent proprietor holding an elder title under a patent for agricultural lands.

2. Public lands—agricultural lands—equitable title.—The equitable title to public lands vests in the purchaser immediately upon the lawful entry, payment of purchase-money, and issue of certificate of purchase thereon. After such entry no proprietary or pecuniary interest remains in the United States and no subsequent grant of any character can affect the right of such prior purchaser.

(Syllabus by the court.)

Opinion.

At law. On final hearing.

Action by the Amador Medean Gold Mining Company against the South Spring Hill Mining Company and others to recover possession of property.

Onley, Chickering & Thomas, for plaintiff.
A. C. Adams and Egan & Rust, for defendants.

Before Sawyer, circuit judge.

SAWYER, *J.:*

It appears from the agreed statement of facts that one Calvin Hammack, under a warrant issued in pursuance of the pro-
70 visions of the Revised Statutes relating to bounty lands for soldiers of the war of 1812, made application at the land office in Sacramento to purchase from the United States certain agricultural lands; which application was approved, the payment of purchase-money for the excess made, and the usual certificate of purchase issued on June 15, 1874. Afterwards, in pursuance of this entry, a patent of the United States was duly issued on September 13, 1876, embracing the premises in controversy. The title acquired by this entry and the patent to the premises in controversy, by proper mesne conveyances, became vested in the plaintiff prior to the commission of the acts complained of, and it was in plaintiff at the commencement of this action. After the said entry and payment for the land by Hammack and the issue of the certificate of purchase on June 15, 1874, and before the issue of said patent in pursuance of such purchase and entry, to wit, on July 18, 1876, one McKim located and acquired the right to a gold mining claim situated on land adjacent to the lands so entered on and patented to said Hammack. Having acquired the right to the mineral location, McKim conveyed his title to the South Spring Hill Mining Company, after which, upon application regularly made and the performance of all the conditions required by the statute, a patent embracing said McKim's mining location was duly issued to said company by the United States under the act authorizing the sale of mineral lands. All the title and rights acquired under said mineral patent were conveyed to and became vested in defendant before the performance of the acts complained of. The defendant, after
71 thus acquiring the title, proceeded to work its claim and develop the mine, and in so doing discovered the apex of a vein or lode within the exterior boundaries of the location as patented. The defendant, in working this lode, followed it down on the dip without departing therefrom until it crossed the line of the adjacent agricultural land held by the plaintiff under the said patent issued upon the entry by Hammack, and worked the lode beneath the surface within the plaintiff's land. The value of the ore removed is $200 and of the land in dispute not less than $5,000. The action is

to recover possession of the portion of the premises from which plaintiff has been ousted by these acts and damages for the injury sustained.

The only question is whether, under the Revised Statutes, a party discovering and acquiring title by patent from the United States to a mineral, gold-bearing vein or lode having its apex within the land purchased is entitled to follow the vein or lode down on its dip, across the boundaries of his own lands into the agricultural lands of an adjoining proprietor, who has the elder title. In my judgment he clearly has not. The equitable title to the agricultural lands held by plaintiff fully vested on the entry and payment by Hammack on June 15, 1874. After that the United States merely held the dry legal title in trust for the purchaser without any pecuniary or beneficial interest in it. From the moment of the entry, payment, and issue of the certificate of purchase these lands cease to be pub-
72 lic and become private property. P. C. Milling & M. Co. *v.* Spargo and Same *v.* Fick, 8 Sawy., 647, 16 Fed. Rep., 348, and cases cited; also Wirth *v.* Branson, 98 U. S., 118; Deffeback *v.* Hawke, 115 U. S., 405, 6 Sup. C't Rep., 95. By the entry and payment by Hammack, there being no known mine on the land, the entire interest to the center of the earth vested in him, and there was nothing left in the United States for a subsequent grant to other parties to operate upon. The only exceptions in the patent relate to easements and other prior rights already vested in other parties before the date of the entry, as was held in the case of P. C. M. & M. Co. *v.* Spargo, cited. No other exceptions are authorized by the statute to be inserted, and exceptions not so authorized, if inserted, would be void. Cowell *v.* Lammers, 10 Sawy., 254, 21 Fed. Rep., 200; Deffeback *v.* Hawke, 115 U. S., 402, 406, 6 Sup. C't Rep., 95. Section 2322, Rev. St., relied on by defendant, does not authorize any such exception, and it only applies, at most, to public lands and to rights acquired to such lands before other parties acquire interests therein. It certainly does not apply to agricultural lands disposed of years, perhaps half a century, before by the Government and before any easement or other right has become vested in other parties. The United States can undoubtedly grant easements and other limited rights in any portion of the public lands, and subsequent purchasers must take them burdened with such easements or other rights; but when it has once disposed of its entire estate in the lands to one party it
73 can afterwards no more burden it with other rights than any other proprietor of lands. Mining Debris Case, 9 Sawy., 493, 18 Fed. Rep., 753. The defendant acquired no rights in the premises in question under the section cited or any other statute of the United States brought to the notice of the court as against the prior grant under which the plaintiff holds. The result is that there must be a judgment for plaintiff, and it is so ordered.

Endorsed: Opinion. Read in open court November 5, 1888. L. S. B. Sawyer, clerk.

74 *Bond on Writ of Error.*

In the Supreme Court of the United States.

SOUTH SPRING HILL GOLD MINING COMPANY, Defendant, Plaintiff in Error,
vs.
AMADOR MEDEAN GOLD MINING COMPANY, Plaintiff, Defendant in Error.

Know all men by these presents that we, Abner Doble and Joseph S. Emery, are held and firmly bound unto Amador Medean Gold Mining Company, the above-named defendant in error, in the sum of five thousand dollars, gold coin of the United States of America, to be paid to the said Amador Medean Gold Mining Company or its successors; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

In witness whereof we have hereunto set our hands and affixed our seals this 12th day of December, A. D. 1888.

The condition of the above obligation is such that whereas the above-named South Spring Hill Gold Mining Company has sued out a writ of error from the Supreme Court of the United States of America to the circuit court of the United States for the ninth circuit in and for the northern district of California to reverse the judgment rendered by said last-mentioned court in the suit entitled

75 Amador Medean Gold Mining Company *versus* South Spring Hill Gold Mining Company (No. 5207), which said judgment was filed and entered of record in said circuit court on the 12th day of November, A. D. 1888:

Now, therefore, if the above-named South Spring Hill Gold Mining Company shall prosecute its said writ of error to effect and answer and pay all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

ABNER DOBLE. [SEAL.]
JOSEPH S. EMERY. [SEAL.]

Signed, sealed, and delivered in presence of—
F. D. MONCKTON.

UNITED STATES OF AMERICA,
Northern District of California, } *ss:*

Abner Doble and Joseph S. Emery, being duly sworn, each for himself says that he is a resident freeholder within the district aforesaid, and that he is worth the sum of five thousand dollars exclusive of property exempt from execution and over and above all his just debts and liabilities.

ABNER DOBLE.
JOSEPH S. EMERY.

Subscribed and sworn to before me this 12th day of December, A. D. 1888.

F. D. MONCKTON,
Commissioner U. S. Circuit Court,
Northern District of California.

The amount and the form of the above and foregoing bond and the sufficiency of the sureties thereon are hereby approved.
December 12th, 1888.
(Signed) LORENZO SAWYER,
Circuit Judge.

Endorsed: Filed December 12th, 1888. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

76 *Stipulation.*

In the Circuit Court of the United States for the Ninth Circuit in and for the Northern District of California.

AMADOR MEDEAN GOLD MINING COMPANY, a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of New York, Plaintiff,
vs.
SOUTH SPRING HILL GOLD MINING COMPANY, Duly Organized and Existing under the Laws of the State of Maine, Defendant.

It is hereby stipulated and agreed in the above-entitled cause that the above-named defendant may be permitted to make and file an amended answer in said cause in such respects and as to such matters as to it and its attorneys may seem best and desirable.
Jan. 7th, 1888.

OLNEY, CHICKERING & THOMAS,
Attorneys for Plaintiff.

Endorsed: Filed Jan'y 23d, 1888. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

77 At a stated term, to wit, the November term, A. D. 1887, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held, at the court-room, in the city and county of San Francisco, on Monday, the 23d day of January, in the year of our Lord one thousand eight hundred and eighty-eight.
Present: The Honorable Lorenzo Sawyer, circuit judge.

AMADOR MEDEAN GOLD MINING COMPANY
vs.
THE SOUTH SPRING HILL GOLD MINING COMPANY. } No. 5207.

On filing stipulation of counsel consenting thereto, and on motion of A. C. Adams, Esq., attorney for defendant, it is ordered that said defendant have leave to file an amended answer herein.

78 [Endorsed:] No. 5207. U. S. circuit court, ninth circuit, northern district of California. Amador Medean Gold Mining Company *vs.* South Spring Hill Gold Mining Co. Copy of order allowing defendant to file an amended answer. Filed —— —, 188–. —— ——, clerk, by —— ——, deputy clerk.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 31 day of January, A. D. 1889.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

L. S. B. SAWYER, *Clerk*,
By —— ——, *Deputy Clerk*.

79 At a stated term, to wit, the July term, A. D. 1888, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held, at the court-room, in the city and county of San Francisco, on Monday, the 23d day of July, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The Honorable Lorenzo Sawyer, circuit judge; the Honorable George M. Sabin, U. S. district judge, district of Nevada.

AMADOR MEDEAN GOLD MINING COMPANY
vs.
SOUTH SPRING HILL GOLD MINING COMPANY. } No. 5207.

By consent of the respective counsel herein it is ordered that this cause be submitted to the court for consideration and decision on the agreed statement of facts filed this day herein.

80 [Endorsed:] No. 5207. U. S. circuit court, ninth circuit, northern district of California. Amador Medean Gold Mining Company *vs.* South Spring Hill Gold Mining Co. Copy of order submitting cause on agreed statement of facts. Filed —— —, 188–. —— ——, clerk, by —— ——, deputy clerk.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 31st day of January, A. D. 1889.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

L. S. B. SAWYER, *Clerk*,
By —— ——, *Deputy Clerk*.

81 In the Circuit Court of the United States for the Northern District of California.

AMADOR MEDEAN GOLD MINING COMPANY, a Corporation, etc., Plaintiff and Defendant in Error,
vs.
THE SOUTH SPRING HILL GOLD MINING COMPANY, a Corporation, etc., Defendant and Plaintiff in Error.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the northern district of California, do hereby certify that the foregoing eighty (80) written and traced pages, numbered from one (1) to eighty (80), inclusive, are a full, true, and correct copy of the record and of all proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

Seal U. S. Circuit Court, Northern Dist. Cal.

Attest my hand and the seal of said circuit court this 31st day of January, A. D. 1889.

L. S. B. SAWYER, *Clerk.*

82 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States, ninth judicial circuit, northern district of California, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Amador Medean Gold Mining Company, plaintiff and defendant in error, and South Spring Hill Gold Mining Company, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said defendant and plaintiff in error, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be- inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 11th day of December, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

Seal U. S. Circuit Court, Northern Dist. Cal.

L. S. B. SAWYER,
Clerk U. S. Circuit Court, 9th Judicial Circuit, Northern District of California.

The above writ of error is hereby allowed.
LORENZO SAWYER,
Circuit Judge, 9th Jud'l Circuit.

83 [Endorsed:] 5207. United States Supreme Court. The South Spring Hill Gold Mi. Co., def't & pl'ff in error, *vs.* Amador Medean Gold Mi. Co., pl'ff & def't in error. Writ of error. Filed December 12th, 1888. L. S. B. Sawyer, clerk U. S. circuit court, northern district of California.

The Answer of the Judges of the Circuit Court of the United States for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States of America within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

[Seal U. S. Circuit Court, Northern Dist. Cal.]

L. S. B. SAWYER, *Clerk.*

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the northern district of California, do hereby certify that a full, true, and correct copy of the writ of error to which this certificate is attached was, on the 12th day of December, 1888, lodged in my office by the therein-named plaintiff in error for the therein-named defendant in error.

Seal U. S. Circuit Court, Northern Dist. Cal.

Attest my hand and the seal of said circuit court this 31st day of January, A. D. 1889.

L. S. B. SAWYER, *Clerk,*
By F. D. MONCKTON,
Deputy Clerk.

84 UNITED STATES OF AMERICA, *ss:*

To Amador Medean Gold Mining Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 14th day of October, A. D. 1889, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of the ninth judicial circuit in and for the northern district of California, wherein The South Spring Hill Gold Mining Company is defendant and plaintiff in error and you are plaintiff and defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned slfould not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States of the ninth judicial circuit in and for the

northern district of California, this 12th day of December, A. D. 1888, and of the Independence of the United States the one hundred and thirteenth.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

85 [Endorsed:] 5207. In the Supreme Court of the United States. South Spring Hill Gold Mining Co., def't & pl'ff in error, *vs.* Amador Medean Gold Mining Company, pl'ff & def't in error. Citation. Filed Dec'r 12th, 1888. L. S. B. Sawyer, clerk U. S. circuit court, northern district of California.

Due service of within citation on us this 12th day of December, 1888, by copy received is hereby acknowledged.

OLNEY, CHICKERING & THOMAS,
Attorney- for Pl'ff and Def't in Error,
Amador Medean Gold Mi. Co.

86 In the Supreme Court of the United States. October Term, 1889.

SOUTH SPRING HILL GOLD MINING COMPANY, a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of Maine (Defendant), Plaintiff in Error,

versus

AMADOR MEDEAN GOLD MINING COMPANY, a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of New York (Plaintiff), Defendant in Error.

Assignment of Errors.

And now comes South Spring Hill Gold Mining Company, a corporation, the above-named plaintiff in error, and says that in the record and proceedings in the above-entitled action there is manifest error in this, to wit:

87 1st. That by the record aforesaid it appears that said judgment was given for said defendant in error and against said plaintiff in error, whereas, by the law of the land, it ought to have been given for said plaintiff in error and against the said defendant in error.

2nd. That the said circuit court erred in holding and deciding that the provisions of section 2322 of the Revised Statutes of the United States were applicable only to public lands and to rights acquired in or to such lands before other parties had acquired an interest in or to such lands.

3rd. That the said circuit court erred in holding and deciding that the provisions of the section 2322 aforesaid do not apply to agricultural lands which were disposed of by the United States after that section took effect, but before any right accruing

88 under the provisions of said section vested in other parties.

4th. That the said circuit court erred in holding and decid-

ing that the plaintiff in error acquired no rights in the premises in question under said section 2322 of said Revised Statutes as against the grant under which the defendant in error holds.

5th. That the said circuit court erred in holding and deciding that said defendant in error was, at the date of the commencement of this action and at the date of the commission of the acts by the said plaintiff in error complained of, seized in fee of that portion of the mineral vein or lode upon which said plaintiff in error was, at the date of the commencement of the action, at work, and which dips and extends laterally from within the said mining property and premises of said plaintiff in error into the said adjoining
89 agricultural land of said defendant in error.

6th. That the said circuit court erred in holding and deciding that said defendant in error was entitled to a judgment for the possession of any portion of said mineral vein or lode dipping and extending from the said mining property and premises of said plaintiff in error laterally into the said agricultural land of said defendant in error and for two hundred dollars damages, or to a judgment for either said possession or for said damages.

7th. That the said circuit court erred in rendering judgment in favor of said defendant in error and against said plaintiff in error for the possession of the lands, lodes, and premises described in said complaint and in said judgment, and particularly in rendering judgment in favor of said defendant in error for the possession of said portion of said vein or lode dipping and extending laterally from the said mining property and premises of said plaintiff in error into the said agricultural land of said defendant in error.

90

8th. That the said circuit court erred in rendering judgment that said defendant in error do have and recover from said plaintiff in error the sum of two hundred dollars—the admitted value of the ore extracted from said agricultural land in the said portion of said vein or lode dipping and extending laterally from the said mining property and premises of said plaintiff in error into said adjoining agricultural land of said defendant in error—and for costs.

And the said plaintiff in error prays that the judgment aforesaid may be reversed and annulled.

A. L. RHODES,
Attorney for Plaintiff in Error.

91 [Endorsed:] In the Supreme Court of the United States. October term, 1889. South Spring Hill Gold Mining Company, a corporation, plaintiff in error, *versus* Amador Medean Gold Mining Company, a corporation, defendant in error. Assignment of errors. A. L. Rhodes, attorney for plaintiff in error.

Endorsed on cover: N. California C. C. U. S. No. 1516. The South Spring Hill Gold Mining Company, plaintiff in error, *vs.* The Amador Medean Gold Mining Company. Filed March 7, 1889.

Office Supreme Court U. S.
FILED.
DEC 21 1891
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

THE SOUTH SPRING HILL GOLD MINING COMPANY,
PLAINTIFF IN ERROR,
v.
THE AMADOR MEDEAN GOLD MINING COMPANY.

No. 338.

BRIEF FOR PLAINTIFF IN ERROR.

GEO. S. BOUTWELL,
Attorney for Plaintiff in Error.

December, 1891.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1891.

Supreme Court of the United States.

SOUTH SPRING HILL GOLD MINING COMPANY,
PLAINTIFF IN ERROR,

v.

THE AMADOR MEDEAN GOLD MINING COMPANY.

No. 338.

BRIEF FOR PLAINTIFF.

The material facts in this case, and which are agreed to, appear to be these, namely:

(1) That on the 15th day of June, 1874, one Calvin Hammack made application in due form for the purchase of certain land situated in the State of California, the property of the United States, and classified as agricultural land.

(2) That on the 18th day of September, 1876, a patent of said land and in due form was issued to said Hammack by the proper authorities of the United States.

(3) That by appropriate conveyances the title to said land is now, and at the time of the commencement of this suit was, vested in the Amador Medean Gold Mining Company, the defendant in error in this case.

(4) That on the 18th day of July, 1876, Wm. L. McKim made a location in due form upon mineral land adjacent to the aforesaid land, said mineral land being then the property of the United States.

(5) That the said McKim perfected his location and then by due proceedings transferred his title to the South Spring Hill Mining Company, which Company received from the United States a patent to the ground covered by McKim's location.

(6) That the South Spring Hill Mining Company conveyed said mineral land to the South Spring Hill Gold Mining Company, the plaintiff in error in this suit, by deed dated April 28, 1882.

(7) That subsequently the South Spring Hill Gold Mining Company opened a vein of ore, the apex of which was within the limits of the external lines of said mineral land location, extracted the ore from the said vein up to the limits of said mineral land location, and then across the side lines thereof, and when at the depth of about 800 feet below the surface of the earth removed a quantity of ore of the value of $200 from the said vein, and from within the limits of said agricultural land. (Record, p. 30.)

The question of law arising on these facts appears to be this: Was the South Spring Hill Mining Company and its grantees, by virtue of the patent so issued, authorized to enter, in the manner stated and for the purpose set forth, upon the lands located by Hammack, it being admitted that the location by Hammack antedates the location by McKim; that the patent to the grantee of Hammack antedates the patent to the grantee of McKim, and that the land located by McKim was classified as mineral land and the land located by Hammack was classified as agricultural land?

By a rule which is much older than the English common law, probably, and of much wider application in the affairs of men, McKim and his grantees were limited to the territory designated by the external lines specified in the grant, and that whether the grantees should operate above

or below the surface of the earth. If that rule has not been changed by positive law it must be applied to this case, and its application is fatal to the contention of the appellant.

If the rule recognized by the common law has been changed, the evidence of that change, for the purposes of the present inquiry, must be found in the statutes of the United States, and in the act of 1872 (v. 17, c. 152, s. 3, p. 91), as it reappears in the Revised Statutes (s. 2322).

It is here quoted and the rights of the parties must depend upon the construction that may be given to its provisions:

"SEC. 2322. The locators of all mining locations heretofore made or which shall hereafter be made on any mineral vein, lode, or ledge situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another."

In the court below, the plaintiff, as appears from the briefs filed in the case, relied upon one or both of two propositions, viz:

(1) That the operation of the statute was limited to lands that had been classified as mineral lands, and—

(2) That the agricultural land was exempt from the easement that might otherwise have been recognized, for the reason that the grant of title to Hammack antedated the grant of title to McKim.

At the trial, his Honor, Judge Sawyer, appears to have accepted the second proposition as a sound proposition in law and as sufficient to warrant the decision that he rendered in favor of the plaintiff. (Record, p. 35.)

Of the statute in question certain things may be asserted or claimed, namely:

(1) That the statute of 1872 was in force June 15, 1874, when Hammack made application for the purchase of the land now owned by the defendant in error.

(2) That the object of the statute, as a public policy, was to protect and encourage the mining interests of the country.

(3) That it was the purpose of Congress to embody in the statutes those customs and regulations which, by general consent and usage, had become the common law of the mining districts.

(4) In the execution of that purpose and in harmony with that public policy, a right was created on the one hand, and on the other an easement was established as to certain lands then the property of the United States.

The grant made by the statute of 1872, whatever the nature and scope of that grant, was equal and alike to all "the locators of all mining locations" then made, or which should thereafter be made, "on any mineral vein, lode, or ledge, situated on the public domain."

By the same statute the grant to the locators was not limited to "the exclusive rights of possession and enjoyment of all the surface included within the lines of their locations," but they were authorized to follow the veins that might depart from a perpendicular course downward so as to extend outside the vertical side-lines of the surface locations.

It is to be observed that the statute nowhere, nor for any reason whatsoever, limits the right of the locator to so follow the vein into and under any lands then the property of the United States, and certainly not for the reason that some of the public lands had been classified as mineral lands and some had been classified as agricultural lands.

Two reservations, however, were made. The grant could not be set up against any claim adverse to the United States that existed on the 10th day of May, 1872.

And, next, the grant was not to be so construed as to authorize the grantees to enter upon "the surface of a claim owned or possessed by another."

In the presence of these exceptions it is claimed that it was not the intention of Congress to exempt the agricultural lands then owned by the Government from the full force of the right with which the mineral lands were then and thus endowed; and if this view be accepted then the circumstance that the location of the agricultural land antedates the location of the mineral land is of no value. The history of the classification of the public lands indicates very distinctly that it was not designed to interfere with grants and easements that might be dictated by an apparent wise public policy as to the use of the public lands when they should become the property of private parties.

By the statute of 1796 every surveyor was required to

note in his field-book the true situation of all mines, salt licks, salt springs, and mill seats which should come to his knowledge. (Stat., v. 1, p. 466.) The substance of this direction has been reproduced in many recent statutes and it is now in force. (Rev. Stat. § 2395.)

By the statute of 1841 salines and mines were exempt from entry under the laws granting pre-emption rights. (Stat., v. 5, p. 456.) Again, by the statute of 1854 mineral lands were exempt from the operation of "the act to graduate and reduce the price of the public lands." (Stat., v. 10, p. 574.)

The tenth and eleventh sections of the act of 1866 (Stat., v. 14, p. 253) indicate a purpose on the part of Congress to reserve from the operation of the pre-emption laws all lands that were "not clearly agricultural lands."

The act of May 10, 1872 (Stat., v. 17, p. 91), "entitled an act to promote the development of the mining resources of the United States," is a full and final exemplification of the public policy on this subject.

The right to pre-empt or locate mineral lands was granted to citizens subject to many and stringent regulations and to the payment of five dollars per acre.

In the presence of these exactions upon the locators of mineral lands, it was at once an act of justice to them and a wise public policy to create in all mineral lands an inchoate right investing the owners thereof with the privilege of penetrating any contiguous public lands below the surface and inside the end lines and the extensions thereof for the purpose of extracting ore from any vein whose apex was ~~upon the surface~~ of a mineral location.

within the lines

The right of the locator of mineral lands to so follow a vein of ore does not in any manner interfere with the enjoyment of agricultural lands, inasmuch as the owner of a mineral location cannot enter upon the surface of adjoin-

ing agricultural land. This interpretation of the statute secures to the owner of agricultural land the full enjoyment of his premises for agricultural purposes, with a right to all metals that may be opened upon the surface, and it yields to the locator or owner of mineral land the right to follow a vein of ore whose value is due entirely to the labor and expense that he has performed and incurred.

Finally, can it not be claimed that the grant of an easement to follow a vein of ore into adjacent land was either a grant not limited by the classification into which such adjacent land might have fallen, or it was a grant limited to mineral locations adjacent to other mineral locations? And if either theory be the true theory, how can an inquiry as to the relative dates of patents possess any legal value, even the least? Or if, by the statute of 1872, agricultural lands were exempt from the easement, that exemption must continue whether the lands should be held in perpetuity by the Government or transferred in a day to a private owner. If, however, as is here contended, there was a grant of an easement, latent to be sure, but to be operative when the required conditions should co-exist, into and under all the then public lands, whatever their classification, then, again, it is to be said that the relative dates of patents are, in a legal view, of no value whatever.

GEO. S. BOUTWELL,
Attorney for the Plaintiff in Error.

Office Supreme Court U. S.
FILED.
APR 27 1892
JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

THE SOUTH SPRING HILL GOLD MINING COMPANY,
PLAINTIFF IN ERROR,
vs.
THE AMADOR MEDEAN GOLD MINING COMPANY.

No. 338.

Brief filed on Behalf of Defendant.

NOTE.—This Brief is a copy of the opening and closing briefs filed by the Complainant in the Circuit Court.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1891.

Supreme Court of the United States.

South Spring Hill Gold Mining Co.,
Plaintiff in Error,
v.
The Amador Medean Gold Mining
Company.
} *No.* 338.

Defendant's Brief.

Counsel have agreed upon certain facts for the trial of this cause, contained in the statement of facts filed herein on the 23d day of July, 1888. From that statement it appears:

That on the 15th day of June, 1874, at Sacramento, in this State, one Calvin Hammack, by virtue of a warrant issued pursuant to the provisions of the Revised Statutes, relating to bounty lands for the soldiers of the war of 1812, made application to purchase from the United States certain agricultural lands.

This application was approved, payment made, and the usual certificate of purchase issued.

In due time, to wit, on the 13th day of September, 1876, the patent of the United States was granted, conveying to Hammack the title of the United States to the land for which he had paid more than two years before.

This patent was duly recorded in the office of the county recorder of Amador county, in this State, in which the land is situate.

The patent is set forth in the agreed statement of facts on page 2 of the record.

The land conveyed is described as the fractional west half of the southwest quarter; the fractional southeast quarter of the southwest quarter, and the southwest quarter of the southeast quarter of section thirty-one, in township seven north, of range eleven east.

Agreed Statement, page 21.

On the 22d day of May, 1884, by mesne conveyances, the plaintiff in this action succeeded to the title acquired by Hammack from the United States Government as to a portion of the land granted to him. This portion includes the land in dispute, and the better to identify it, we have indicated it on the accompanying photographic copy of the plat forming a part of the United States patent issued to defendant's grantor, as hereinafter stated by red-ink marks at each corner. (Rec. p. 24.)

Between the time when Hammack received from the United States Land Office his certificate of purchase, and the date of the issuance of the patent to him, to wit: on the 18th day of July, 1876, Wm. L. McKim, in all respects qualified, made a mineral location upon premises adjacent to the agricultural land of Hammack.

He took all necessary steps to perfect his location, and, having transferred his title to the South Spring Hill Mining Company, that Company, upon application regularly made, and after compliance with all the requirements of law, received from the United States its patent to the ground embraced in McKim's original location.

We have indicated the ground conveyed by said mineral

patent upon the photograph copy annexed hereto by green marks at the several corners of the claim.

The patent itself is set forth at length in the statement. (Rec. p. 23.)

On the 28th day of April, 1882, the defendant in this action, by deed of grant from the South Spring Hill Mining Company (patentee as aforesaid), became the owner of the land conveyed by the mineral patent, and ever since has been, and now is, the owner of the same, and possessed of all rights originally acquired by McKim, or embraced in the mineral patent issued to its immediate grantor.

It has carried on work within its said claim, and, in the course of its operations, discovered the apex of a vein or lode within its exterior boundaries.

It has followed that vein or lode downward, through its dips; and while pursuing this vein, without departing therefrom, has entered the land of plaintiff at a point about 340 feet southeasterly from the northeasterly corner of defendant's premises, and has removed ore therefrom.

The ore so removed was situated between vertical planes drawn downward through the end lines of defendant's surface location of said lode and premises.

The value of the ore removed is two hundred dollars, and the land in dispute worth not less than five thousand dollars.

We have made our resumé of facts full and intend it to represent the case fairly.

The question presented is the right of a claimant under an agricultural patent antedating a mineral location to prevent the successor of the locator from entering upon his ground.

We say antedating a mineral location; for although the mineral location was made before the agricultural patent

was issued, that patent, when issued, related back to the time when Hammack's application was filed.

This is established by the long current of authorities, and we need refer to only two cases, one decided by this Court, Pacific Coast M. & M. Co. *v.* Fargo (8 Sawyer, 645–646), and a late case from the United States Supreme Court, Deffenback *v.* Hawke (115 U. S. 392, 405), with the cases cited in each decision.

The agricultural patent, then, when granted to Hammack carried with it all rights possessed by the United States when Hammack received his certificate of purchase.

The United States was the absolute owner of the ground. Its right to determine upon the character of that ground was inherent.

Through its Land Department, created to pass upon all applications for the purchase of its ground, and to supervise all steps to be taken in acquiring the title of the Government, it had determined the land Hammack sought to purchase to be agricultural.

Its decision was final. Its officers had received and passed upon the proofs offered; and, having exercised their functions (in the absence of any appeal), the matter is forever settled. In the support of this we need cite only Wilcox *v.* Jackson (13 Peters, 498), Smelting Co. *v.* Kemp (104 U. S. 636), and cases therein cited.

It is proper that we should call the attention of the Court to the fact that an investigation more than usually strict must have been made by the proper officers before Hammack's application to enter this land as agricultural was approved.

It appears from Copp's U. S. Mining Decisions, 1873–4, that all the land in this township seven north, eleven east, Mount Diablo meridian, had been withdrawn from the agricultural class in which it had been placed by the deputy

surveyors originally, and a special burden imposed upon applicants for this, with other lands, to rebut the presumption that it was mineral in character.

Copp's U. S. Mining Decisions, 1873–4, pages 297–302.

That portion of the patent making the grant to Hammack is as follows:

"Now, know ye, that there is therefore granted by the "United States unto the said Calvin Hammack, as assignee "as aforesaid, and to his heirs, the tract of land above de-"scribed."

And then follows the habendum clause: "To have and "to hold the said tract of land, with the appurtenances "thereof, unto the said Calvin Hammack, as assignee as "aforesaid, and to his heirs and assigns forever."

Now comes the limitation upon the rights of Hammack. He may have and hold said tract, *with its appurtenances*, "subject to any vested and accrued water rights for mining, "agricultural, manufacturing, or other purposes, and rights "to ditches and reservoirs used in connection with such "water rights, as may be recognized and acknowledged by "the local customs, laws, and decisions of courts, and also "subject to the right of a proprietor of a vein or lode to "extract and remove his ore therefrom, should the same be "found to penetrate or intersect the premises hereby "granted, as provided by law."

Defendant cannot, if our conclusion be correct that a patent relates to the time of application made, claim any *vested* right, for a right acquired subsequent to the grant to Hammack could not be termed a vested right.

His claim must be founded upon the last limitation upon Hammack's rights, to wit, the right reserved by the Gov-

ernment for a "proprietor of a vein or lode to extract and "remove his ore therefrom, should the same be found to "penetrate or intersect the premises hereby granted, as "provided by law."

Now, in the case at bar, certain elements going toward making up the whole limitation are found.

A vein or lode has been discovered within defendant's ground; it has been found to penetrate the premises granted Hammack.

But the vital element is lacking. At the time when Hammack's application to buy agricultural land was granted and the certificate of patent issued, McKim, through whose location defendant claims, was not a "proprietor." He had no rights.

As this Court has well said in the case cited above, "the "language (referring to the exception under consideration) "certainly does not mean parties claiming to be 'proprie-"tors,' who locate mines after the issuance of the patent, but "only persons who are 'the proprietors' of mines at the "time when the patentee's rights attached. When the pat-"ent issues, it covers everything embraced in the land to "which no prior right has attached, otherwise the patent "would not have reserved the rights of 'the *proprietor*' of "a 'vein,' but would have reserved *the vein itself*. There "can be no rights of a 'proprietor' to reserve unless there "is a proprietor who has rights to protect at the time the "reservation is made. The patent passed the entire title as "against any subsequent locator, and that being so, no legal "right could be acquired against the patentee by a subse-"quent location."

And if, in connection with the foregoing quotation, the language of this Court in the case against Fick (8 Sawyer, 647) be considered, to wit—

"The difference between this and the other case is, that "in this case the mining location was made after the entry "and payment for the land, but before the patent issued; "while in the other, the mining location was not made till "after the patent issued. But this can make no difference "in the rights of the parties. The purchaser became the "equitable owner of the land the moment he entered and "paid for it and received his certificate of purchase. From "that time the United States had no real interest in the land. "It only held the dry legal title in trust for the purchaser "pending the usual delay in issuing patents, and the patent "only perfected the title, the right to which had already "vested"—

if, we say, the language last quoted be read in connection with the citation first made, the conclusion is irresistible that the patent when issued covered everything to which no prior right had attached at the time when the certificate of purchase issued from the register of the U. S. Land Office, to wit: June 15, 1874. This was more than two years before McKim made his mineral location, under which defendant claims right to enter the land of plaintiff.

Unless the facts in the case of Pacific Coast M. & M. Co. *v.* Fick are dissimilar to those of the case at bar, the decision of this Court in that case must govern here.

The several dates upon which the important events in obtaining title in the two cases occurred are as follows:

Date of application in Fick case, December 19, 1874; date of Hammack's application, May 15, 1874; date of mineral location in Fick case, August 14, 1875; date of mineral location in this case, July 18, 1876; date of agricultural patent in Fick case, September 6, 1876; and in the case at bar, September 13, 1876.

So far the cases run parallel. But a difference exists, and it may as well be referred to here as in our closing brief.

In the Fick case the mineral location was under the sur-

face of the ground that passed by the agricultural patent. In the case at bar it was on land adjacent to the land that passed by the agricultural patent.

We are anticipating defendant's position, but are forced to the conclusion that the attempt will be made to distinguish the Fick case from the case at bar upon this difference, and that in a dictum of the Court in its decision found on page 646 counsel will try to find standing ground.

The language to which we refer is: "The language of "exception, strictly construed, seems to refer only to mines "located outside the lands, which by their dip or inclination "penetrate or intersect the land patented, and not to mines "discovered and located within it."

But a careful consideration of this language will not afford comfort to defendant.

Suppose the language does refer only to mines located outside the lands, and suppose the exception should benefit the proprietors of mines located outside; it would still be incumbent upon defendant to show that it comes within the benefits of the exception before it can avail.

That is to say, unless it can show its proprietorship, or that of its grantors, it cannot be advantaged by the reservation made by the United States in the conveyance to Hammack.

In conclusion, we wish to suggest that there is a radical difference between rival claimants for mineral lands and claimants as to rights in agricultural lands.

Minerals are always hidden, and the Government, in defining the right of its citizens to make locations of mineral lands, prescribes different rules and regulations from those enforced in acquiring agricultural lands. The agricultural land may have mineral beneath its surface, and therefore,

when the Government conveys it, it restricts the grant, so as to give any one, who by a prior mineral location has acquired vested rights under the law, to follow any vein or lode, the apex of which he discovers in his ground, into the adjoining agricultural land, the full enjoyment of his rights.

At the same time it says by its grant, this is agricultural ground, and, except as against a present proprietor of a mineral location, the patentee shall have exclusive ownership of surface and all parts.

CONCLUDING BRIEF.

These propositions are admitted:

First. The land in controversy was agricultural.

Second. Its character had been conclusively determined before defendant's grantors had acquired any rights.

Third. The United States had conveyed it to McKim by its patent containing only this reservation: "Subject to any "vested and acquired water rights for mining, agricultural, "manufacturing, or other purposes, and rights to ditches and "reservoirs used in connection with such water rights, as "may be recognized and acknowledged by local customs, "laws, and decisions of courts; and also subject to the "right of a proprietor of a vein or lode to extract and re-"move his ore therefrom, should the same be found to pen-"etrate or intersect the premises hereby granted, as pro-"vided by law."

But, say counsel, the statutes were incorporated in and constituted a part of that grant. This will not be denied.

The particular section which defendant's counsel seeks to have interpolated in this grant is Section 2322 of the Revised Statutes. They make the broad claim that as that section constituted a part of the law at the time plaintiff's grantor acquired, that grantor took subject to that law;

and the right was thereby reserved to any locator of any mining claim to enter this land beneath the surface and extract ore, when the apex of a vein or lode should be found within the surface of such location.

Counsel, in our judgment, has strained this section. It does not apply to the case at bar. It undoubtedly would bind the United States so that any locator of a mining claim could enter its mineral ground beyond the surface of his location, or could enter mineral land theretofore granted by the United States.

But rights are limited. They are not absolute. The same power that conferred the right claimed here by defendant had also established ways whereby the public lands should be classified.

Surveys had been provided for, and methods devised, whereby the character of lands should be determined. The public domain was offered for sale at prices according to its class. Different requirements were provided for acquiring the title of the Government to different kinds of land. The applicant for timber land, the settler, the locator of a mining claim, the purchaser of agricultural land, each must pursue the prescribed form. And when the Government gave its title it made different reservations in its grants, according to the character of the land.

In the case of a mineral grant, it reserved the rights specified in Section 2322; in case of a homestead, other rights; and in case of a purchaser of agricultural lands, the rights specified in the patent under which we claim.

In other words, it determined the character of its land, and when it made its conveyance, that conveyance was absolute, except as to the reservations contained in the instrument of conveyance.

It seems to us that counsel err in maintaining that the land in controversy was or is mineral land. The fact that

it is found to contain minerals eight hundred feet below its surface does not make it mineral land. It is not such. The United States, the common grantor of both plaintiff and defendant, has said that it is not such. It has said that it is agricultural land. It has conveyed it as such, and it cannot now lie either in the mouth of the United States or of its grantee, the defendant in this action, to say now that this land is not agricultural land, but is mineral land.

The chapter within which Section 2322 is contained relates alone to mineral lands and mining resources.

The general meaning of the terms used in that section must be limited in their qualification to the character of the lands as specified.

According to the contention of defendant, under Section 2319 of the same chapter, even though the United States had parted with its title to land classified as agricultural land, that same land beneath its surface would still be open to exploration and purchase to discover and obtain valuable mineral deposits therein, and Section 2323 would be held to confer upon the person running a tunnel for the development of a vein or lode, or for the discovery of mines, the right of possession to all veins or lodes within 3,000 feet from the surface of such tunnel, whether or not the grounds within which such vein or lode might be found had been theretofore conveyed by the United States or not.

A reasonable construction of the sections of this chapter must convince any court that they relate alone to mineral lands; that is, such lands as the United States has determined to be of that character.

The cases cited in our opening brief from 8 Sawyer are directly in point.

Defendant's grantor was not a proprietor at the time when plaintiff's grantor acquired title to this property. It was agricultural land. It had been determined to be so by

the United States Government, and the language of this Court in the cases last referred to are clearly and plainly applicable to the case at bar.

The attempt of counsel to twist the language of exception and interpolate the words "as provided by law" in another part of the exception needs no comment. They signally failed to establish the right claimed.

If the agricultural patent, as the Courts said in the case last cited, passed the entire title to the property as against any subsequent locator, certain it is that the right of defendant to enter that ground, he not having been a proprietor at the time when plaintiffs acquired its right, cannot exist.